



FOREWORD

I am indeed delighted to announce that the Institute of Chartered Accountants of Bangladesh (ICAB) is publishing Study Manual on Taxation II for CA Students Professional Stage Application Level updated with changes in tax laws covering the Finance Act 2018 and related SRO. This Study Manual contains various aspects of updated Income Tax and VAT provisions with sufficient examples/illustrations for better understanding of the students & users. The previous Manual on Taxation II had covered the Finance Act up to 2017. There have been many changes in tax laws/rules/applications this year. The necessity of availability updated Manual with changes of relevant laws/rules in the hand of the students cannot be overemphasized. This Manual is being published taking into consideration the changes made in last fiscal year.

I would like to thank the Chairman and Committee Members of Board of Studies of ICAB for their undaunted support and co-operation for this publication. I express my special thanks and gratitude to **Mr. Ranjan Kumar Bhowmik FCMA**, Commissioner of Taxes for this task. Updating the Manual on Taxation II is always an intricate task, although it needs to be done at periodic intervals. Mr. Bhowmik has taken that task well to edit, update and prepare this Manual.

ICAB, the regulator of the accountancy profession in Bangladesh, acknowledges the need, and supports the move for such updating of various Study Manuals from time to time. Being a member of the International Federation of Accountants (IFAC) and having twinning arrangements with Institute of Chartered Accountants of England and Wales, ICAB is obligated to standardize its student's training lines. With that purpose in view ICAB updated the Study Manuals to cater to the needs of CA Students. The publication of this Manual would provide necessary guidance to the CA Examinees to prepare themselves with updated knowledge in taxation for their examinations and hence extract benefit from it.

We have tried our best to publish an error free updated version of this Manual. However, mistakes might have remained which may kindly be brought to the cognizance of ICAB for onward correction.

I would like to thank all the members of the Institute, Secretariat and Directorate and those pertinent with the publication of the Manual. I hope the students will be enormously enriched from this Manual manifesting better results in their examination.

Dewan Nurul Islam FCA
President

Contents

	Page
1 Introduction	5-12
2 Introduction to Bangladesh income tax	13-39
3 Administration and Tribunal	40-49
4 Charge of income tax	50-63
5 Income from salaries	64-84
6 Income from interest on securities	85-92
7 Income from house property	93-109
8 Agricultural income	110-123
9 Income from business or profession	124-142
10 Capital gain	143-155
11 Income from other sources	156-168
12 Depreciation allowances	169-179
13 Set off and carry forward of losses	180-188
14 Exemption and allowances (tax holiday / other exemption)	189-202
15 Deduction/collection of tax at source	203-217
16 Advance payment of tax	218-225
17 Return of income	226-232
18 Assessment	233-245
19 Assessment of individuals	246-275
20 Assessment of partnership firms	276-285
21 Assessment of companies	286-323
22 Liability in special cases and assessment of non-residents	324-329
23 Special provisions relating to avoidance of tax	330-337
24 Powers of income tax authorities including search and seizure	338-346
25 Penalty and Prosecution	347-354
26 Recovery of tax	355-360
27 Double taxation relief	361-370
28 Transfer pricing	371-389
29 Refunds	390-394
30 Appeal and reference	395-402
31 Value Added Tax	403-443
32 Ethics	444-459
33 Tax Planning	460-465
34 Miscellaneous	466-475

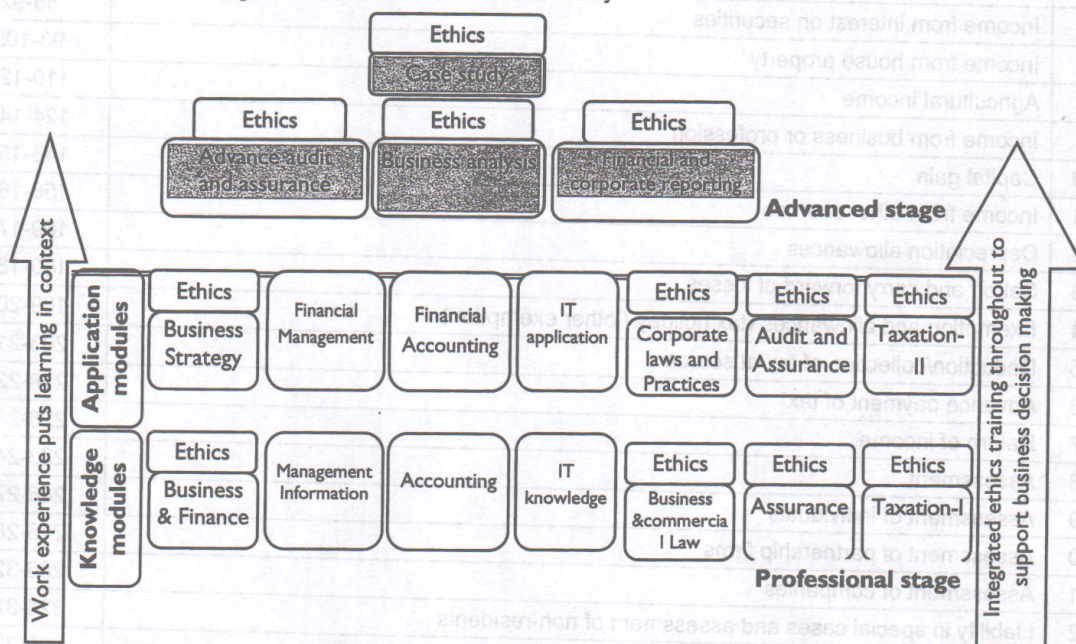
1. Introduction

1.1 What is taxation and how does it fit within the Professional Stage?

Structure

The syllabus has been designed to develop core technical, commercial and ethical skills and knowledge in a structured and rigorous manner.

The diagram below shows the twelve modules at the Professional Stage, where the focus is on the acquisition and application of technical skills and knowledge, and the Advanced Stage which comprises of two technical integration modules and the Case Study.



The knowledge base

The aim of the Taxation module is to enable students to understand the general objectives of tax and to calculate income tax, capital gain tax, corporate tax and VAT in straightforward scenarios.

Progression to application level

The knowledge base that is put into place here will be taken further in the application level taxation module, where the aim will be to enable students to prepare tax computations and provide tax advice to individuals and companies, again in straightforward scenarios. The above taxes introduced at knowledge level are taken to a higher level.

Progression to advanced stage

The case study of advanced level will help tax planning. The aim is to ensure that students can provide technical advice in respect of issues arising in business transformations.

The above illustrates how the knowledge of taxation principles gives a platform from which a progression of skills and taxation expertise is developed.

1.2 Services provided by professional accountants

Professional accountants should be able to:

- Explain the general objectives of tax, the influences upon Bangladesh tax system and the different types of tax in Bangladesh
- Recognize the ethical issues arising in the course of performing tax work and identify the obligations of Bangladesh tax system imposes on taxpayers and the implications for non-compliance
- Determine taxable income and tax to be paid by the individuals
- Determine gain tax payable by individuals and the chargeable gains subject to corporate tax
- Deal company tax matter
- Determine VAT to be paid and deducted at different stage

2. Specification grid for Taxation-II

2.1 Module aim

To develop students' knowledge of taxation in a practical approach so that they are able to undertake straightforward tax computations for individuals, firms and business entities. To give students a working knowledge of the processes of tax investigations and disputes and to enable them to explain the reasons for professional and ethical requirements in the area of tax work.

On completion of this module, students will be able to:

- explain the relevance of ethical and professional issues for a professional accountant undertaking tax work
 - provide information to business entities and to individuals on the amount of taxation that they may owe to or be owed by the taxation authorities
 - advise and assist business entities and individuals in the adherence to regulations surrounding taxation
 - provide information to business entities and to individuals on the effects of national taxes, including circumstances where foreign taxes affect national taxes
- describe the processes of tax investigations and taxation disputes
- handle transfer pricing issues
- do tax planning in a proper way

2.2 Specification grid

This grid shows the relative weighting of subject matter within this module and should guide the relative study time spent on each. Over time the marks available in the assessment will equate to the weightings below, while slight variations may occur in individual assessments to enable suitably rigorous questions to be set.

	Weighting (%)
Ethical considerations	10
The taxation of business entities including Transfer Pricing issues	30
The taxation of individuals	20
Tax planning , investigations and disputes	20
Value Added Tax	20
	<hr/>
	100

3. Learning materials are structured as follows:

- Title page
- Contents page
- The specification grid for Taxation-II
- A brief note about the learning materials
- Study guide. This includes
 - hints and tips on how to approach studying for your CA exams
 - guidance on how to approach studying with this study manual
- Information on how to obtain help with your studies
- The detailed syllabus and learning outcomes

Each chapter has the following components:

- Introduction
 - Learning objectives
 - Practical significance
 - Stop and think
 - Working context
 - Syllabus links
- Examination context
 - Exam requirements
 - Examiner's comments on how students tackle questions
- Chapter topics
 - Details about topics
 - Problems
 - Answers
 - Some past years questions
 - Solution to those past years questions

4. Study guide

4.1 Help yourself study for your CA exam

Exams for professional bodies like ICAB are different from those you have taken at college or university level. You will be under greater time pressure before the exam –as you may be combining your study with work. Here are some hints and tips.

The right approach

1 Develop the right attitude

Believe in yourself	Yes, there is lot of things to learn. Thousands have succeeded before and you can too.
Remember why you're doing it	You are studying for a good reason: to advance your career.

2 Focus on the exam

Read through the syllabus and study guide	It will tell you what you are willing to know and are supplemented by examination context/sections in the study manual.
Remember why you're doing it	You are studying for a good reason: to advance your career as a professional.

3 The right method

See the whole picture	Keeping in mind how all the detail you need to know fits into the whole picture will help you to understand it better. The introduction of each chapter puts the material in context. <ul style="list-style-type: none">▪ The Learning objectives, section overviews and examination context sections show you what you need to grasp.
Use your own words	To absorb the information, you need to put it into your own words. <ul style="list-style-type: none">▪ Take notes.▪ Answer the questions set in each chapter.▪ Draw mind maps.▪ Try to interact with other colleagues or friends.
Give yourself cues to jog your memory	<ul style="list-style-type: none">▪ Try key points with a highlighter pen.▪ Write key points on cards.

4 The right recap

Review, review, review	Regularly reviewing a topic in summary form can fix it in your memory. The study manual helps you to review in many ways. <ul style="list-style-type: none">▪ Chapter summary will help you to recall each study session.▪ The self-test will actively tests your grasp of the essentials.▪ Go through the examples in each chapter repeatedly.
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4.2 Study cycle

The best way to approach this Study Manual is to tackle the chapters in order. We will look in detail at how to approach each chapter below but as a general guide, taking into account your individual learning style; you could follow this sequence for each chapter.

Key study steps	Activity
Step 1 Topic list	This topic list is shown in the contents for each chapter and helps you to navigate each part of the book; each numbered topic is a numbered section in the chapter.
Step 2 Introduction	This sets your objectives for study by giving you the big picture in terms of the context of the chapter. The content is referenced to the study guide, and examination context guidance shows what the examiners are looking for. The Introduction tells you why the topics covered in the chapter need to be studied.

Step 3 Section overviews	Section overviews give you a quick summary of the content of each of the main chapter sections. They can also be used at the end of each chapter to help you review each chapter quickly.
Step 4 Explanations	Proceed methodically through each chapter, particularly focusing on areas highlighted as significant in the chapter introduction or study guide.
Step 5 Note taking	Take brief notes, if you want. Don't copy out too much. Remember that being able to record something yourself is a sign of being able to understand it. Your notes can be in whatever format you find most helpful; lists, diagrams, mind maps.
Step 6 Examples	Work through the examples very carefully as they illustrate key knowledge and techniques.
Step 7 Answers	Check yours against the suggested solutions, and make sure you understand if there are any discrepancies.
Step 8 Self-test	Use the self-assessment question to check how much you have remembered of the topics covered.
Step 9 Question practice	Attempt the question(s) relating to this chapter in the revision of suggested answers.

Moving on...

When you are ready to start revising, you should still refer back to this study manual.

- As a source of reference (you should find the index particularly helpful for this).
- As a way to review (the section overviews, examination context, chapter summaries and self-test questions help you here).

Remember to keep careful hold of this study manual – you will find it invaluable in your work. The technical reference section has been designed to help you in the workplace by getting further information on the topics studied.

5. Getting help

Firstly, if you are receiving structured tuition, make sure you know how and when you can contact your tutors for extra help. Identify a work colleague who is qualified, or has at least passed the paper you are studying for, who is willing to help if you have questions.

Form a group with a small number of other students, you can help each other and study together, providing informal support.

Syllabus and learning outcomes

The learning outcomes of taxation-II with reference to the chapters covered the following:

1. Ethical considerations

Candidates should be able to explain the relevance of ethical and professional issues for a professional accountant undertaking tax work.

In the examination, candidates may be required to

- a. explain the relevance and importance of key ethical and professional issues for a professional accountant undertaking tax work
- b. judge when to refer taxation matters to senior for help.

2. The taxation of business entities

Candidates should be able to provide information to business entities on taxation issues, advice and assist business entities in the adherence to regulations surrounding taxation, and provide information on the effects of various taxes, including circumstances where foreign taxes affect domestic taxes.

In the examination, candidates may be required to:

- c. identify investments and expenditure which legally reduce tax liability and judge when they might be appropriate
- d. identify for actual or proposed transactions those treatments that are illegal for tax purposes and explain the reasons for the illegality
- e. explain how tax considerations can affect any investment decisions of a business entity
- f. explain how tax considerations can affect financial reporting by an entity
- g. calculate the amounts subject to national, regional and local taxation, the resulting amount of tax payable or recoverable by an entity and the effects of any foreign taxes on those amounts (the calculation of foreign tax liabilities is not required)
- h. identify how tax losses can be used by a business entity
- i. describe the effect of a change in the ownership of a business entity on its tax losses
- j. explain how alternative methods of achieving business objectives can lead to different tax outcomes
- k. calculate the tax implications for a business entity of different courses of action, taking into account the relevant taxes and other relevant implications
- l. identify transfer pricing issues

3. The taxation of individuals

Candidates should be able to provide information to individuals on the amount of taxation that they may owe to or be owed by the taxation authorities, advice and assist individuals in the adherence to regulations surrounding taxation, and provide information on the effects of national taxes, including circumstances where foreign taxes affect national taxes.

In the examination, candidates may be required to:

- a. identify the actual or proposed transactions, treatments that are illegal for tax purposes and explain the reasons for the illegality
- b. calculate the amounts subject to domestic taxation, the resulting amount of tax payable or recoverable by an individual or entity and the effects of any foreign taxes on those amounts (the calculation of foreign tax liabilities is not required)
- c. identify how tax losses can be used by an individual
- d. explain how alternative methods of achieving personal objectives can lead to different tax outcomes
- e. calculate the tax implications for an individual of different courses of action (borrowing, investment, expenditure etc.), taking into account the relevant taxes and other implications

4. Investigations and disputes

Candidates should be able to describe the processes of tax investigations and taxation disputes.

In the examination, candidates may be required to:

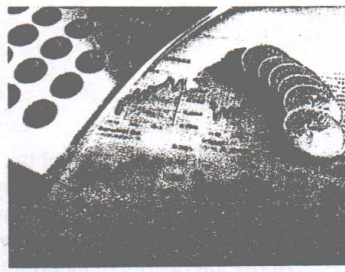
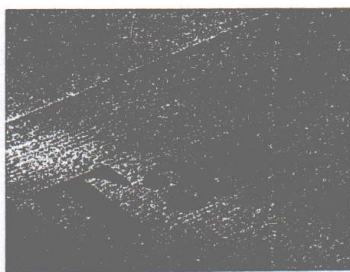
- a. identify the periods within which the relevant authorities can enquire into a taxpayer's returns or other information and tax liabilities and describe the taxpayer's right of appeal
- b. describe the process for dealing with taxation disputes.

5. Value Added Tax (VAT)

Candidates should be able to explain the process of computation of VAT payable, administration, different schedules, turnover tax, supplementary duty, other relevant rules and procedures and advise and assist individual and business entities in the adherence to regulations surrounding VAT, turnover tax and supplementary duty.

In the examination, candidates may be required to:

- a. demonstrate the concept and definition
- b. explain the imposition of VAT, supplementary duty and identify the applicable tax rate
- c. explain the registration procedures, method of computation of VAT payable, time of payment of VAT and turnover tax
- d. mention the documents required for VAT administration
- e. identify the different schedule of VAT and supplementary duty
- f. identify the VAT authorities and its powers and functions
- g. identify the consequences for non-compliance of VAT rules and regulations.



Chapter 1

Introduction to Bangladesh income tax

Contents

Introduction

Examination context

Topic list

1.1	Introduction
1.2	Bangladesh tax structure
1.3	Sources of tax law and practice
1.4	Scope of Bangladesh income tax
1.5	Structure of IT Ordinance, 1984
1.6	Objectives and importance of income tax
1.7	Role of income tax in economic development of Bangladesh
1.8	Some definitions & important concepts relating to tax
1.9	The concept of income
1.10	Capital or revenue
1.11	Tax and income
1.12	Different rates of tax
1.13	Liability to pay tax
1.14	Tax liability on income
1.15	Some significant issues of income tax

Learning objectives

- Identify the objectives of tax in terms of economic, social justice and environmental issues
- Recognize which taxes apply to different taxpayers e.g. individual, partners and companies
- Identify the sources of tax law
- Get the idea about the income, tax and income tax
- Know the history of income tax
- Recognize different rates of income tax applicable to individual, corporate and others
- Understand the concept of capital and revenue expenditure
- Identify the residential status of an assessee

Practical significance

Every person in Bangladesh is affected by our tax system in some ways, often on a daily basis and without even realizing it. We pay tax on the money we earn and on the things we buy and this tax is of course used by the government to pay for our development purpose such as schools, hospitals, roads and so on.

In Bangladesh we have an annual budget cycle which begins with the pre-budget report in late May/early June and ends with the enactment of a Finance Act in June every year. This is supplemented by a huge body of case laws and practical interpretation.

The Income Tax Ordinance, 1984, The Value Added Act, 1991, Customs Act, 1969 are the main sources of tax law. The National Board of Revenue (NBR), a statutory body is the highest authority for the purpose of these Ordinance and Acts.

Income of different types is taxed at different rates. Before calculating income tax liability one should have the concept of income, tax, income tax and income tax rate and other relevant issues. Residential status has significance for determining tax liability.

One way of helping people to deal with complexity in the tax system is to use technology. Presently people can use computerized system to calculate tax on his/her taxable income. Even NBR website gives the opportunity to compute tax by using **Tax calculator**.

Stop and think

It is likely that you have been paying tax personally on your various sources of income/gains for some time. Have you stopped to think about how this affects the actions that you take?

Working context

The impact of taxation on the overall economy and the society is increasing day by day. Tax is charged on different types of assesses like individual, companies and others. The volume and complexity of tax law is now such that many business houses have to spend considerable amounts of money and time just on tax administration and planning. Many business decisions will have tax consequences. Most large corporate houses operate their business on a global basis

Without advice from an accountant, a business can easily find itself paying too much tax and missing deadlines. It is important to have a good overall feel for the tax system early in your studies so that you know where to look for the detailed rules when you actually need them later on.

Syllabus links

The topics covered in this chapter are essential background knowledge which will underpin the whole of your Taxation studies.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the social justice principles being applied for taxation purposes
- Understand which taxes apply to different taxpayers
- Identify the sources of tax law in Bangladesh.
- Define some terminologies relating to income tax
- Determine the residential status of an assessee based on given information
- Identify the five tier tax rate for individual and other tax rates for other assesses

Question practice

For question practice on these topics, go to the suggested questions and answers covering the basic idea about taxation.

Objectives

Section overview

- ➔ Taxation system of Bangladesh has developed gradually and has been changed by successive governments in accordance with their political philosophy.
- ➔ Governments use taxation to encourage or discourage certain types of economic activity.
- ➔ Taxation may be used to promote social justice but there is no political consensus on what is meant by this term.
- ➔ Environmental concerns have led to changes in taxation policy.
- ➔ There is no exhaustive definition of income in Income Tax Ordinance, 1984
- ➔ Income tax is tax on income.
- ➔ The Ordinance got its root from the then British India in 1860.
- ➔ Different tax rates are applicable for different types of assessee and classes of income.
- ➔ Income tax is levied on income and not on capital receipts.
- ➔ The distinction between capital and revenue receipts is much more difficult than between capital and revenue expenditure.
- ➔ Residential status is very vital for determining tax liability.

1.1 Introduction

Among direct taxes, income tax is one of the main sources of revenue of Bangladesh Government to generate funds for running its administration and also funding development expenditure. Income tax is broadly classified in two categories namely **“personal income tax”** and **“corporate income tax”**. “Personal income tax” is tax on income of individuals, partnership firms etc. It has a progressive rate i.e. rate of tax increases as income increases. While “corporate income tax” is tax on income of companies. It has a flat rate i.e. rate of tax is same irrespective of level of income. Income tax is basically imposed on the principle of ability to pay. “The more a taxpayer earns the more he should pay” - is the basic principle of charging income tax. It aims at ensuring equity and social justice.

Bangladesh taxation system has developed over centuries from the then British India in 1860 to the present condition on a piecemeal basis. The system, however, developed on the basis of generally accepted canons and there had been efforts towards rationalizing the tax administration for optimizing revenue collection, reducing tax evasion and preventing revenue leakage through system loss.

In the fiscal scheme of our country, at present, income tax is levied along with other direct and indirect taxes like VAT, Excise duty, Customs duty, Gift tax etc.

Direct tax and Indirect tax

Direct taxes are those taxes incidence of which cannot be shifted on others. The person paying the tax shoulders the entire burden of tax. This is basically tax on person (both physical & legal person).

Whereas indirect taxes are those taxes incidence of this is shifted by the person paying the tax to others like his customers. These are basically tax on goods or services.

1.2 Bangladesh tax structure

The tax structure of Bangladesh consists of both direct taxes (income tax, gift tax, foreign travel tax, land development tax, non-judicial stamp, registration, immovable property tax, etc.) and indirect taxes (customs duty, excise duty, motor vehicle tax, narcotics and liquor duty, VAT, Turnover tax, SD, etc.). Analysis of revenue collection activities in Bangladesh reveals that tax revenue accounts for 85% of government revenue.

In the national budget, tax revenue is classified in two categories (on the basis of tax enforcing agency). They are NBR tax and non-NBR tax. The nomenclatures of NBR tax are income tax; value added tax, excise duty, turnover tax, export duty, import duty, regulatory duty, supplementary duty, foreign travel tax, gift tax etc. The share of NBR tax to total tax revenue is around 96%.

The nomenclatures of non-NBR tax are land revenue, non-judicial stamp, motor vehicles tax, registration fees, narcotics and liquor duty etc.

As per the National Budget 2018, the tax revenue target for the fiscal year 2018-19 has been set by the government to Tk. 2,962.10 billion which was Tk. 2,250 billion in the revised budget of fiscal year 2017-18.

From the analysis of the National Budget 2018-19, it can be seen that in the fiscal year 2018-19 revenue collections from Value Added Tax (VAT) have been estimated at around Tk. 1,105.43 billion (37.32% of total tax), from income tax at Tk. 1,022.01 billion (35.50%), from import & export duty at Tk. 325.89 billion (11%), from supplementary duty at Tk. 487.66 billion (16.46%) and from other taxes at Tk. 21.12 billion (0.72 %).

The significant features of Bangladesh tax system are as follows:

A) Multiple tax system: The tax system of Bangladesh consists of various types of taxes which are as follows:

I. Taxes on income and profit

1. Income tax - Company
2. Income tax – Persons other than company

II. Taxes on property & capital transfer

1. Gift tax
2. Narcotics Duty
3. Land Revenue
4. Stamp Duty - non judicial

III. Taxes on goods and services

1. Customs Duties (Both on import and export)
2. Excise Duties
3. Value Added Tax (VAT)
4. Turnover tax
5. Supplementary Duty (on luxury items and in addition to VAT)
6. Road tax
7. Electricity Duty
8. Other taxes and duties (Foreign travel tax)

B) Tax administration in Bangladesh:

National Board of Revenue (NBR) is the supreme authority for tax administration in Bangladesh and collects around 85% of total revenue for the country. Various reform measures have been taken and still in consideration to make the tax system of the country more effective and efficient.

C) Tax avoidance behavior of the taxpayers:

The culture of tax compliance is low. Due to weakness of enforcement the level of tax evasion & avoidance remains high. The reliance on indirect taxation has been treated as one of the main obstacles in attaining economic progress in Bangladesh since only a few tax payers share the burden of taxes. Despite NBR's untiring effort, the progress is not still satisfactory. People especially corporate entities use various measures to evade tax using loopholes of the current tax system.

D) Narrow tax base:

Our tax base is too narrow and the tax law is full of exemptions and allowances. Agricultural sector provides employment for around 60 percent of the population contributes only 20 percent of GDP and virtually pays little in the form of income tax. Narrow tax base remain a big obstacle in augmenting tax revenue

From the above discussion, it is clear that attaining an optimal tax structure is one of the most important issues for the government of Bangladesh to increase the revenue generation from taxes for accelerating growth and to improve the quality of life of the citizens. A long-term sustainable solution to enhance transparency, promote growth, improve tax compliance and thus to increase tax to GDP ratio is a much desirable issue in the context of Bangladesh.

1.3 Sources of tax law and practice of income tax:

A. Legislation

The legislations behind income tax regulation are as follows;

- (a) Income Tax Ordinance, 1984 ;
- (b) Income Tax Rules ,1984 ;
- (c) Finance Act of the respective year and its clarification given by the NBR;
- (d) Double Taxation Avoidance Agreements ;
- (e) Statutory Rules and Orders (SRO).

B. Case laws

Over the years, many hundreds of tax cases have been brought before the courts where the interpretation of the tax law is not clear.

Decisions made by the honorable judges to resolve these cases form case laws. Many judgments are precedent for future cases which means that they must be followed unless superseded by legislation or the decision of higher court.

C. NBR publications

The National Board of Revenue (NBR) is a statutory body having the highest executive authority and empowered to make necessary rules relating to income tax matters. NBR makes available some forms, notifications, brochures, and guidelines of income tax, VAT and customs duty through its websites and other forms of communication for public at large. NBR also issues instructions & guidance to subordinate tax office which is a binding on them. There are many SROs and circulars on income tax and VAT published by NBR providing guideline for tax purpose.

1.4 Scope of Bangladesh income tax

Some provisions, rules and regulations have to be kept in mind in order to determine income tax. These are as follows:

- I. **The Income Tax Ordinance, 1984:** The Income Tax Ordinance, 1984 came into force on 1st July, 1984 as Income Tax Manual Part-I. As of 01/07/2016 it has 23 Chapters with numerous sections, sub-sections, clause, sub-clause, proviso etc. and seven schedules containing provisions of total tax law.
- II. **Income Tax Rules, 1984:** The procedural matter required to implement the tax regulations is incorporated in Income Tax Rules. NBR is empowered to make or amend rules.
- III. **Finance Act:** To give effect to the various proposals in the annual budget covering the areas of direct and indirect taxes. *It contains*
 - tax rates ;
 - amendments of the clause/sub-section/section/schedule in laws relating to government tax or non-tax revenue;
 - insertion of new clause/sub-section/section/schedule in the existing laws relating to government tax or non-tax revenue;
 - deletion of old clause/sub-section/section/schedule in the existing laws relating to government tax or non-tax revenue
 - introduction of new laws relating to government tax or non-tax revenue;
 - Refinement of existing law.
- IV. **SRO (Statutory Rules and Order):** SROs are subordinate law. Section 185 of the Income Tax Ordinance empowers NBR to amend Income Tax Rules, 1984 whereas section 44(4)(b) of the Income Tax Ordinance empowers Government to issue notification to reduce rate of tax or exempt tax of class of person or class of income.
- V. **Income tax case-law:** In the course of assessment proceedings, dispute may arise between the NBR and the assessee over the interpretation of some of the provisions of the act and rules. The assessee can go the court objecting the NBR's interpretation, and the judgments given by the courts act as guidance to the assessing officers and the assessee in similar nature in the future.

1.5 Structure of Income Tax Ordinance, 1984:

The Income Tax Ordinance, 1984 came into force on 1st July, 1984 as Income Tax Manual Part-1. A brief description regarding the manual is enumerated below:

I. The Income Tax Ordinance, 1984 - Chapters and sections

Chapter	Title	
1	Preliminary	1
2	Definitions	2
3	Tax administration	3-10
4	Taxes Appellate Tribunal	11-15
5	Charge of income tax	16-18
6	Deemed income	19
7	Head wise computation of Income	20-43
8	Exemption and allowances	44-47
9	Payment of tax before assessment	48-74
10	Return and statements	75-80
11	Assessment	81-94
12	Liability in special cases	95-103
13	Special provisions relating to tax avoidance	104-107
14	Transfer pricing	107A-107J
15	Requirement of furnishing certain information	108-110
16	Powers of income tax authorities	112-122
17	Imposition of penalty	123-131
18	Recovery of tax	134-143
19	Double taxation relief	144-145
20	Refunds	146-152
21	Alternate Dispute Resolution (ADR)	152F-152S
22	Appeal, Tribunal and Reference	153-162
23	Protection of information	163
24	Offences and prosecution	164-171
25	Miscellaneous	172-184
26	Rules and repeal	185-187

II. The Income Tax Ordinance, 1984-Schedules

SL #	Schedule	Title
1	First Schedule:	
	Part-A	Approved Superannuation Fund or Pension Fund
	Part - B	Recognized Provident Fund
	Part - C	Approved Gratuity Fund
2	Second Schedule:	Rates of income tax in certain special cases

3	Third Schedule:	Computation of depreciation and amortization
4	Fourth Schedule:	Computation of the profits and gains of insurance business
5	Fifth Schedule:	
	Part-A	Computation of profits and gains from exploration and production of petroleum and the determination of tax thereon.
	Part- B	Computation of profits and gains from exploration and extraction of mineral deposits in Bangladesh (except oil and gas).
6	Sixth Schedule:	
	Part-A	List of tax-free income
	Part - B	Investment allowances for assessee being resident and non-resident Bangladeshi
7.	Seventh Schedule	Computation of tax relief by way of foreign tax credit

III. The Income Tax Rules, 1984

The IT Rules, 1984, comprises *rules* to supplement various sections and provisions of the IT Ordinance, 1984. National Board of Revenue (NBR) enjoys flexibility to amend or change any rules through the notification in the official gazette.

1.6 Objectives and importance of income tax:

Taxation is one of the major sources of revenue to Government. The main objectives of taxation are (a) *to meet the country's revenue and development expenditure* (b) *to accomplishing some economic and social objectives*, such as redistribution of income, encouraging savings, price stabilization and discouraging consumption of harmful and socially undesirable goods. Importance of income tax is as follows:

- (a) **Revenue collection:** Income tax is a major source of revenue for the government. In Bangladesh, income tax revenue accounts for nearly 35% of total tax revenue. Therefore, the first and foremost aim of income tax is to raise public revenue to meet the ever increasing public expenditure.
- (b) **Re-distribution of income:** An effective, efficient and fair taxation system can reduce inequalities in income and wealth. This is possible by taxing rich people heavily and to confer benefit to the poorer section through progressive income tax.
- (c) **Increase in savings:** An effective and efficient tax system encourages people to save through providing tax credit facilities on investment allowance.
- (d) **Increase in capital investment:** An effective and efficient tax system encourages local and foreign investors to invest in the country through providing various facilities like tax credit facilities on investment allowance, tax holiday scheme, depreciation allowance, tax incentives etc.
- (e) **Economic development:** The income tax revenue can be used by the government to ensure the economic development of the country. It can be used to build the infrastructure, to invest in social security programs, in various poverty elevation programs. *The incentive to investment also encouraging production & there by growth of GDP.*

So, from the above discussion, it is clear that income tax plays a significant role in the economic development of a country. For this reason various reform strategies have been taken to modernize NBR.

1.7 Role of income tax in economic development of Bangladesh:

As it has been discussed before, taxation is one of the major sources of public revenue to meet a country's revenue and development expenditures with a view to accomplishing some fundamental economic and social objectives, such as redistribution of income, price stabilization and discouraging harmful consumption. The contribution of income tax is playing a pivotal role in the economic development of Bangladesh. The government of Bangladesh has taken various measures to modernize the tax system and imposed various provisions in the Income Tax Ordinance, 1984. Some of the provisions are as following:

- (a) **Tax holiday scheme:** According to Section 46B and 46C of the ITO, 1984, an industrial undertaking and physical infrastructural facility established within the prescribed time limit in the specified area shall be exempted from payment of tax for period, i.e. 5 to 10 years. This is known as Tax Holiday Scheme. The main objective of this scheme is to ensure economic development through industrialization attracting investment in some specific sectors.
- (b) **50% income exemption on export sales:** An assessee, other than a company not registered in Bangladesh, will get 50% income exemption facility from the business of export if it is not enjoying any tax holiday/exemption or any reduced tax rate facility as clearly mentioned at 6th Schedule(Part-A)Para-28.
- (c) **Accelerated depreciation allowance:** Accelerated Depreciation allowance is allowed on the new machineries used in various industries at a specified rate (50% of the cost in the first year, 30% in the 2nd year and remaining 20% in the 3rd year).
- (d) **Tax incentives for small & cottage industries:** According to Section 47(b)(ii) tax incentives are allowed on the income and profit of cottage industries to encourage investment in cottage industries which can contribute to the economy significantly.
- (e) **Tax incentives for encouraging savings:** The government also encourages savings providing tax rebate facilities on certain types of investment and donations. Such as, purchase of shares and debentures, savings certificate, DPS, insurance premium, provident fund etc.
- (f) **Tax exemptions in certain expenditures:** Certain expenditures to enhance social welfare like contribution to president's/prime minister's relief fund; Government Zakat fund, Ahsania Mission Cancer Hospital etc. are exempted from tax payment. These provisions also encourage people to spend in certain social development program.
- (g) **Tax incentives for foreign investors:** For attracting foreign investors various concessions like tax holiday, tax exemptions for interest, royalty, technical assistance and fees, remittance to own country have been allowed as per the ITO, 1984.
- (h) **Allowance for scientific research:** For developing new products, technologies in the industrial sectors certain allowance is allowed. Tax rebate is given on the cost of relevant scientific research.
- (i) **Tax incentives for remittance to Bangladesh:** A significant number of Bangladeshi people work abroad and to encourage them remittances through banking channel has been declared tax exempted as per 6th schedule(Part-A) Para-48.

So, it can be said that to ensure the economic development of the country certain provisions have been introduced in the ITO, 1984. These provisions encourage not only foreign investors but also the local entrepreneurs.

1.8 Some definitions & important concepts relating to tax:

- 1. **Agricultural income [U/S 2(1)]:** "agricultural income" means-
 - (a) any income derived from any land in Bangladesh and used for agricultural purposes
 - (i) by means of agriculture; or
 - (ii) by the performance of any process ordinarily employed by a cultivator to render marketable the produce of such land; or

- (iii) by the sale of the produce of the land raised by the cultivator in respect of which no process, other than that to render the produce marketable, has been performed; or
- (iv) by granting a right to any person to use the land for any period; or
- (b) any income derived from any building which-
 - (i) is occupied by the cultivator of any such land as is referred to in sub-clause (a) in which any process is carried on to render marketable any such produce as aforesaid;
 - (ii) is on, or in the immediate vicinity of such land; and
 - (iii) is required by the cultivator as the dwelling house or store-house or other outhouse by reason of his connection with such land.
- 2. **Annual value [U/S 2(3)]:** "annual value" shall be deemed to be
 - (a) in relation to any property let out-
 - (i) the sum for which property might reasonably be expected to let from year to year and any amount received by letting out furniture, fixture, fittings etc.; or
 - (ii) where the annual rent in respect thereof is in excess of the sum referred to in paragraph (i), the amount of the annual rent.
- 3. **Appellate Joint Commissioner [U/S 2(4)]:** "Appellate Joint Commissioner" means a person appointed to be an Appellate Joint Commissioner of Taxes U/S 3 and includes an Appellate Additional Commissioner of Taxes and also a person appointed to hold current charge of an Appellate Joint Commissioner of Taxes.
- 4. **Assessee [U/S 2(7)]:** "assessee", means a person by whom any tax or other sum of money is payable under this Ordinance, and includes-
 - (a) every person in respect of whom any proceeding under this Ordinance has been taken for the assessment of his income or the income of any other person in respect of which he is assessable, or of the amount of refund due to him or to such other person;
 - (b) every person who is required to file a return U/S 75, U/S 89 or U/S 91;
 - (c) every person who desires to be assessed and submits his return of income under this Ordinance;
 - (d) every person who is deemed to be an assessee, or an assessee in default, under any provision of this Ordinance; and
 - (f) every person by whom a minimum tax is payable under this Ordinance;
- 5. **Assessment [U/S 2(8)]:** "assessment", with its grammatical variations and cognate expressions, includes re-assessment and additional or further assessment;
- 6. **Assessment year [U/S 2(9)]:** "assessment year" means the period of twelve months commencing on the first day of July every year; and includes any such period which is deemed, under the provisions of this Ordinance, to be assessment year in respect of any income for any period;
- 7. **Business [U/S 2(14)]:** "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- 8. **Capital asset [U/S 2(15)]:** "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-
 - (a) any stock-in-trade (not being stocks and shares), consumable stores or raw materials held for the purposes of his business or profession;
 - (b) personal effects, that is to say, movable property (including wearing apparel, jewellery, furniture, fixture, equipment and vehicles), which are held exclusively for personal use by, and are not used for purposes of the business or profession of the assessee or any member of his family dependent on him; and

9. **Charitable purpose** [U/S 2(16)]: "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any object of general public utility;

10. **Child** [U/S 2(18)]: "child", in relation to any individual, includes a step-child and an adopted child of that individual;

11. **Company** [U/S 2(20)]: "company" means a company as defined in [the Companies Act, 1913 (VII of 1913) or the Companies Act, 1994 (VIII of 1994)] and includes-

(a) a body corporate established or constituted by or under any law for the time being in force;

(b) any nationalized banking or other financial institution, insurance body and industrial or business enterprise;

(bb) an association or combination of persons, called by whatever name, if any of such persons is a company as defined in [the Companies Act, 1913 (VII of 1913) or the Companies Act, 1994 (VIII of 1994)];

(bbb) any association or body incorporated by or under the laws of a country outside Bangladesh; and;

(c) any foreign association or body, [not incorporated by or under any law], which the Board may, by general or special order, declare to be a company for the purposes of this Ordinance;

12. **Deputy Commissioner of Taxes** [U/S 2(23)]: "Deputy Commissioner of Taxes" means a person appointed to be a Deputy Commissioner of Taxes U/S 3, and includes a person appointed to be an Assistant Commissioner of Taxes, an Extra Assistant Commissioner of Taxes and a Tax Recovery Officer;

13. **Dividend** [U/S 2(26)]: "Dividend" includes--

(a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its shareholders of all or any part of its assets or reserves;

(b) any distribution by a company, to the extent to which the company possesses accumulated profits, whether capitalized or not, to its shareholders of debentures, debenture-stock or deposit certificates in any form, whether with or without interest;

(c) any distribution made to the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not;

(d) any distribution by a company to its shareholders on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated profits have been capitalized or not;

(dd) any profit remitted outside Bangladesh by a company not incorporated in Bangladesh under the Companies Act, 1994 (VIII of 1994);

(ddd) any distribution of profit of a mutual fund or an alternative investment fund

(e) any payment by a private company of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company, in either case, possesses accumulated profit;

But does not include--

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share including preference share for full cash consideration, or redemption of debentures or debenture-stock, where the holder of the share or debenture is not entitled in the event of liquidation to participate in the surplus assets;

(ii) any advance or loan made to a shareholder in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(iii) any bonus share issued by a company.

14. **Employer [U/S 2(27)]**: "employer" includes a former employer;
15. **Employee [U/S 2(28)]**: "employee", in relation to a company, includes the managing director, or any other director or other person, who irrespective of his designation, performs, any duties or functions in connection with the management of the affairs of the company;
16. **Fair market value [U/S 2(30)]**: "fair market value" means, in relation to capital asset-
 - (a) the price which such asset would ordinarily fetch on sale in the open market on the relevant day, and, where such price is not ascertainable, the price which the Deputy Commissioner of Taxes may, with the approval in writing of the Inspecting Joint Commissioner, determine;
 - (b) the residual value received from the lessee in case of an asset leased by a financial institution having license from the Bangladesh Bank on termination of lease agreement on maturity or otherwise subject to the condition that such residual value plus amount realized during the currency of the lease agreement towards the cost of the asset is not less than the cost of acquisition to the lessor financial institution.
17. **Fees for technical services [U/S 2(31)]**: "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient, or consideration which would be income of the recipient classifiable under the head "Salaries";
18. **Income [U/S 2(34)]**: "income" includes--
 - (a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance;
 - (b) any amount which is subject to collection or deduction of tax at source under any provision of this Ordinance;
 - (c) any loss of such income, profits or gains;
 - (d) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;
 - (e) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Ordinance.
 - (f) any amount on which a tax is imposed;
 - (g) any amount which is treated as income under any provision of this Ordinance.
19. **Income year [U/S 2(35)]**: "income year", means:
 - (a) the period beginning with the date of setting up of a business and ending with the thirtieth day of June following the date of setting up of such business;
 - (b) the period beginning with the date on which a source of income newly comes into existence and ending with the thirtieth day of June following the date on which such new source comes into existence;
 - (c) the period beginning with the first day of July and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be,
 - (d) the period beginning with the first day of July and ending with the date of retirement or death of a participant of the unincorporated body;
 - (e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the thirtieth day of June following the date of the retirement, or death, as the case may be;
 - (f) in the case of bank, insurance financial institution or any financial institution the period of 12 months commencing from the first day of January of the relevant year; or
 - (g) in any other case the period of 12 months commencing from the first day of July or the relevant year;

Provided that the DCT may allow a different financial year for a company which is a subsidiary, including a subsidiary thereof, or holding company of a parent company incorporated outside Bangladesh or a branch or liaison office thereof if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company;

20. **Person [U/S 2(46)]**: "person" includes an individual, a firm, an AOP, a HUF, a local authority, a trust, a fund, an entity, a company and every other artificial juridical person;
21. **Profits in lieu of salary [U/S 2(50)]**: "profits in lieu of salary" includes--
- (a) the amount of compensation due to, or received by, an assessee from his employer at, or in connection with, the termination of, or the modification of any terms and conditions relating to, his employment; and
 - (b) any payment due to, or received by, an assessee from a provident or other fund to the extent to which it does not consist of contributions by the assessee and the interest on such contributions;
22. **Recognized Provident Fund [U/S 2(52)]**: "recognized provident fund" means a provident fund which has been, and continues to be, recognized by the Commissioner in accordance with the provisions of Part B of the First Schedule;
23. **Resident [U/S 2(55)]**: "resident", in respect of any income year, means
- (a) an individual who has been in Bangladesh-
 - (i) for a period amounting in all to, 182 days or more in that year; or
 - (ii) for a period of, or periods amounting in all to, 90 days or more in that year having previously been in Bangladesh for a period of, or periods amounting in all to 365 days or more during 4 years preceding that year;
 - (b) a HUF, firm or other association of persons, the control and management of whose affairs is situated wholly or partly in Bangladesh in that year; and
 - (c) a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year;
24. **Royalty [U/S 2(56)]**: "royalty" means consideration (including any lump sum consideration but excluding any consideration which is classifiable as income of the recipient under the head "capital gains") for --
- (a) transfer of all or any rights, including the granting of a license in respect of a patent, invention, model, design, secret process or formula, or trade mark or similar property;
 - (b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret process or formula, or trade mark or similar property;
 - (c) the use of any patent, invention, model, design, secret process or formula, or trade mark or similar property;
 - (d) the imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill;
 - (e) the transfer of all or any rights, including granting of a license, in respect of any copyright, literary, artistic or scientific work, including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for sale, distribution or exhibition of cinematograph films; or
 - (f) the rendering of any services in connection with any of the aforesaid activities;
25. **Tax [U/S 2(62)]**: "tax" means the income tax payable under IT Ordinance, 1984 and includes any additional tax, excess profit tax, penalty, interest, fee or other charges leviable or payable under this Ordinance;
26. **Tax Day [u/s 62A]**: Tax day means

(1) In case of an assessee other than company 30th day of November

(2) In case of company 15th day of the 7th month following the end of the income year or the 15th day of September following the end of the income year where the said 15th day falls before the 15th day of September.

(3) If the Tax day is holiday then automatically it would be the next working day.

27. Total income [U/S 2(65)]: "total income" means the total amount of income referred to in section 17 computed in the manner laid down in this Ordinance, and includes any income which, under any provision of this Ordinance, is to be included in the total income of an assessee;

28. Transfer [U/S 2(66)]: "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset, or the extinguishment of any right therein, but does not include-

(a) any transfer of the capital asset under a gift, bequest, will or an irrevocable trust;

(b) any distribution of the assets of a company to its shareholders on its liquidation; and (c) any distribution of capital assets on the dissolution of a firm or other association of persons or on the partition of a Hindu undivided family;

29. Year [U/S 2(69)]: "year" means a financial year.

1.9 The concept of income

There is no exhaustive definition of "income" in the Income Tax Ordinance, 1984. The term income is easy to understand but difficult to define. What is taxed, as so often has been pointed out under the income tax law, is nothing that is real; it is the statutory income measured in a particular way.

The object of the Ordinance is to tax "income". The term is expanded in section 28 and 31 into income, profits and gains; but the expansion is more a matter of words than of substance. The word "income" is an expression of elastic ambit and the courts when describing income have almost always qualified their description by saying that it is not exhaustive.

From various judicial decisions, the following are held to be characteristics of income:

(a) Income should be received in the form of money or money's worth.

(b) Income should be in the form of revenue nature.

(c) It should arise from some definite source or a source with some sort of regularity.

(d) It should be derived from a person other than the recipient.

(e) Income tainted with illegality is also classified as taxable income under tax law.

Income is a more general term than profits or gains. The words "income, profits and gains" are used in a distinctive sense, and the word "income" is not limited by the words "profits" and "gains". A receipt may be taxable as income, although it may contain no element of profits or gain. Profits or gains mean something which is in the nature of interest or fruit, as opposed to principal or tree. "Gains" is really equivalent to "profits". The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning these receipts.

Section 2(34) of the Income Tax Ordinance 1984 gives a definition of income as under:

'Income' includes-

(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance;

(b) any amount which is subject to collection or deduction of tax at source under any provision of this Ordinance;

(c) any loss of such income, profits or gains;

(d) the profits and gains of any business of insurance carried on by a mutual insurance association computed in accordance with paragraph 8 of the Fourth Schedule;

- (e) any sum deemed to be income, or any income accruing or arising or received, or deemed to accrue or arise or be received in Bangladesh under any provision of this Ordinance.
- (f) any amount on which a tax is imposed;
- (g) any amount which is treated as income under any provision of this Ordinance.

But the amount of any bonus share or the amount of bonus declared to rise paid up share capital shall not be included as income of that shareholder.

To understand the true nature of income, the following two case decisions can be referred to:-

(a) Shaw Wallace & Co case:

"Income in the Ordinance connotes a periodical monetary return coming in with some sort of regularity or expected regularity from a definite source. The source need not be continuously productive, but it must be one where object is the production of a definite return, excluding anything in the nature of a mere windfall. Income is essentially the product of something which is often loosely spoken as 'capital'. It is not correct to say that every receipt which is not a capital is assessable. On the other hand, it is only receipts that are of the nature of income receipts that are assessable....."

(b) Rani Amrit Kunwar case:

"Income, in order to be taxable, need not arise from any business activity, investment of enforceable obligation to pay, but may arise from voluntary or customary payments. Nor is it necessary that it should be the result of some outlay on the part of the assessee....."

Therefore, for the purposes of the Income Tax Ordinance 1984, income is a periodical monetary return coming in with some sort of regularity or expected regularity from a definite source, not excluded by the Ordinance.

Total income: section 2(65)

Section 2(65) defines the term "total Income" as follows: "total income" means the total amount of income referred to in section 17 computed in the manner laid down in the Ordinance, and includes any income which, under any provision of the Ordinance is to be included in the total income of an assessee.

1.10 Capital or revenue

Difference between capital and revenue is of vital importance. **Income tax is levied on income and not on capital receipts.** While ascertaining the profits of a business or profession, the revenue expenditure is deductible from the trading receipts, not the capital expenditure. Courts have often observed that it may conclusively be judged that a particular receipt is a capital or a revenue receipt. Decided cases merely illustrate and not all are perfect guides.

The distinction between capital and revenue receipts is much more difficult than between capital and revenue expenditure. There are no hard and fast rules which may help in determining whether a particular receipt is a capital or a revenue receipt.

Whether a particular expenditure is incurred solely to earn profit or whether it is a capital expenditure depends in each case on the nature of business, commercial practice, the nature of the expenditure and other relative circumstances. No rigid rules can be laid down in this connection.

1.11 Tax and income tax :

Income tax is tax on income. Section 2(62) of the Income Tax Ordinance 1984 defines tax as follows: "tax" means the income tax payable under the Ordinance and includes any additional tax, excess profit tax, penalty, interest, fee or other charges leviable or payable under the Ordinance." Therefore, income tax is any tax, additional tax, excess profit tax, penalty, interest, fee or other charges leviable or payable on any income or deemed income under the Ordinance.

1.12 Different tax rates:

The different tax rates for different types of assessee for the assessment year 2018-19 are as follows:

(1) Tax rates for individual, firm, AOP, HUF and artificial juridical person:

- (a) The threshold limit of total Income not liable to Income tax for the assessment year 2018-19 stands at Tk. 2,50,000.

Tax exempted ceiling of income for female assessee, senior citizens at age 65 or above is TK. 3,00,000 and that for handicapped/disabled persons is Tk. 4,00,000 and for gazated war wounded freedom fighter is tk. 4,25,000 for the assessment year 2018-2019. The threshold limit in case of parents or legal guardian of any person with disability will be 50,000 taka more. If both father and mother of the disable person is assessee then any one will avail this benefit.

The 6 tier tax rates for the assessment year 2018-19 are given below:

Tier	Assessment year: 2018-19		
	Level of income	Slab	Tax rate
1	Up to Tk. 2,50,000	First Tk.2,50,000	0%
2	Tk. 2,50,001- Tk.6,50,000	Next Tk.400,000	10%
3	Tk.6,50,001-Tk.11,50,000	Next Tk.500,000	15%
4	Tk.11,50,001-17,50,000	Next Tk.6,00,000	20%
5	Tk.17,50,001-47,50,000	Next Tk.30,00,000	25%
6	Above Tk.47,50,000	On above	30%

- (b) **Small and cottage industries:** If the assessee is an owner of any small and cottage industry or engaged in such kind of activities at less developed / least developed area as specified by the NBR, he/she will be eligible to have a tax rebate on such income at following rates:

- (i) If production / turnover increase by more than 15% but less than 25% comparing to previous year, then 5% tax rebate will be allowed;
- (ii) If production / turnover increase by more than 25% comparing to previous year, rate of rebate will be 10%.

In order to avail the above opportunities, the industries be located in the "less developed areas" and "least developed areas" as specified by NBR in accordance of I.T.O. 1984.

(2) Tax rates for companies

Applicable tax rates for companies for the Assessment year 2018-19 are as follows:

- (a) **Publicly Traded Company: 25%**
- (b) **Non-Publicly Traded Companies: 35%.**
- (c) **Non-resident company: 35%**
- (d) **Local Bank, Insurance and Financial Institutions: 37.5%.**
- (e) **Foreign Bank, Insurance and Financial Institutions: 40%**
- (f) **Merchant Bank: 37.5%.**
- (g) **Tobacco manufacturing company /Firm /Proprietorship: 45%.**
- (h) **Mobile Phone Operator Company: 40%[if listed] 45%[if not listed].**

Provided that if the mobile phone operator company turned into a publicly traded company by offering at least 10% (it must not include Pre IPO placement at a rate higher than 5%) of its paid up capital through stock exchanges, then the tax rate will come down to 40%.

(3) Tax rate on dividend income for assessment year 2018-19

(a) For company receiving dividend -

- (i) If dividend received from a company registered under Company Act 1994 or any profit remitted outside Bangladesh by a foreign company, the tax rate on dividend income will be 20%.
- (ii) 10% to 15% on profit remitted outside Bangladesh by a foreign company with whom there is Double Taxation Avoidance Agreement with Bangladesh.

(b) For assessee other than companies -

- (i) Resident and non-resident Bangladeshi individual, firm etc. –Normal slab rate.
- (ii) Non-resident foreigner individual- @ 30%

(4) Tax rate for non-resident foreigner

Tax rate of non-resident foreigners is straight 30%.

(5) Tax rate on income from capital gain (Paragraph 2 of the Second Schedule)

(a) Capital gain on transfer of capital assets:

- (1) Companies: @ 15%.
- (2) Other assessee:
 - (i) Sales within 5 years of acquisition: at normal slab rate.
 - (ii) Sales after 5 years of acquisitions: at normal slab rate applicable on total income (including capital gain) or @ 15% on capital gain and slab rate on other income, whichever is lower.

(b) Capital gains on sale of:

- (i) Shares of listed companies: 10% for companies & firms, 0% for others (SRO no 196 dated 30/6/2015)
- (ii) Shares of Private Limited Companies:
 - (iii) (i) Sales within 5 years of acquisition: at normal slab rate.
 - (iv) Sales after 5 years of acquisitions: at normal slab rate applicable on total income (including capital gain) or @ 15%, whichever is lower.
 - (v) Capital gains received by any non-resident on sale of shares of Bangladeshi listed companies is also tax free if the assessee is entitled to similar exemption in his own country where he is a resident. (Ref. 6th Schedule, part-A, paragraph-43)

(6) Tax rate on winning from lotteries referred to in section 19(13)

As per paragraph 3 of the Second Schedule, the tax rate on winning from lotteries is normal slab rate applicable on total income (including winning from lotteries) or @ 20%, whichever is lower.

1.13 Tax liability

A. Individuals

- Income tax: An individual may be liable to pay tax on the following income:

- income from salary
- income from interest on securities
- income from house property
- agricultural income
- income from business or profession
- capital gain and
- income from other sources

- Value added tax (VAT) as a manufacturer, importer or supplier of goods/services and also trader.

An individual used to be taxed annually on his total income at the rate prescribed at the Finance Act enacted every year.

B. Partnership

A partnership is a group of persons carrying on a business together with a view to making profit.

Partnership firm is taxable. Tax is to be calculated at normal slab rate. Share income from the partnership firm is to be added with each partner's personal income. After tax computation of the partner a portion of tax to be deducted at average rate based on taxed share income as per 6th Schedule, Part-B, and Paragraph-16.

C. Companies

A company is a legal person who is legally separated from its owners (shareholders) and its managers (directors). For the purpose of income tax the meaning of company is defined under section 2(20) of Income Tax Ordinance, 1984.

A company is liable to pay income tax, the rate being determined with reference to the Finance Act enacted in every financial year.

1.14 Tax liability on income

The tax is payable in the following year i.e. assessment year on income earned during an income year. However, there are provisions for payment of taxes in advance during the income year, such as deduction of taxes at source (Sec 48), advance payment of tax u/s 64 etc.

Under section 2(35), **Income year** means-

- The financial year (July to June) immediately preceding the assessment year applicable for all assessee other than bank, insurance and financial institution.
- In case of bank, insurance and financial institution income year must be the calendar year.
- An income year can be less than 12 months in certain special situation but cannot exceed 12 months.

Provided that the DCT may allow a different financial year for a company which is a subsidiary or holding company of a parent company incorporated outside Bangladesh if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company;

1.15 Some significant issues of income tax

Assessment year:

Assessment year means the year following the financial year, i.e. income year. Thus, the assessment year always begins on 1st July and ends on 30th June every year. This period is also known as the financial year. Accordingly, it is the current financial year in which income of the immediately preceding financial year (known as income year) is assessed.

As per section 2(9) of the ITO, 1984; the term "assessment year" means the period of twelve months commencing on the first day of July every year.

From the following example, we can see how to find out the assessment year:

Accounting year ended on	Income year	Assessment year
30.06.2017 (other than bank, insurance and financial institution)	2017-18	2018-19
31.12.2017 (For bank, insurance and financial institution)	2017	2018-19

Exceptions to the rule of assessment year:

Generally, income is taxed in the subsequent year to the income year. But, in certain cases, to protect the interests of revenue, the income is taxed in the year of earning itself. Thus, in those cases the assessment year and the income year are the same. The exceptions to the normal rule of assessment year are discussed as under:

- Income of discontinued business [section 89(2)]:** Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the last income year up to the date of such discontinuance may be charged to tax in that assessment year.
- Persons leaving Bangladesh [section 92(b)]:** When it appears to the Assessing Officer that an individual may leave Bangladesh and has no intention to return, the total income of such individual for the period from the expiry of the income year in relation to the current assessment year up to the probable date of his departure from Bangladesh is chargeable to tax in current assessment year itself.
- Income of non-resident shipping companies [section 102(2)]:** Section 102(2) of the ITO, 1984, provides for the taxation of income of non-resident shipping companies in the year in which they earn their income in Bangladesh, provided that such companies do not have any representative here.

Different classes of assessee:

As per ITO, 1984, assessee is a person who is liable to pay any sum under the Income Tax Ordinance, 1984 or in respect of whom the proceedings have been under this Ordinance. The below diagram depicts the different classes of assessee:

Residential status of an assessee:

Section 2(55) defines the term 'resident' as follows: - 'Resident', in respect of any income year, means-

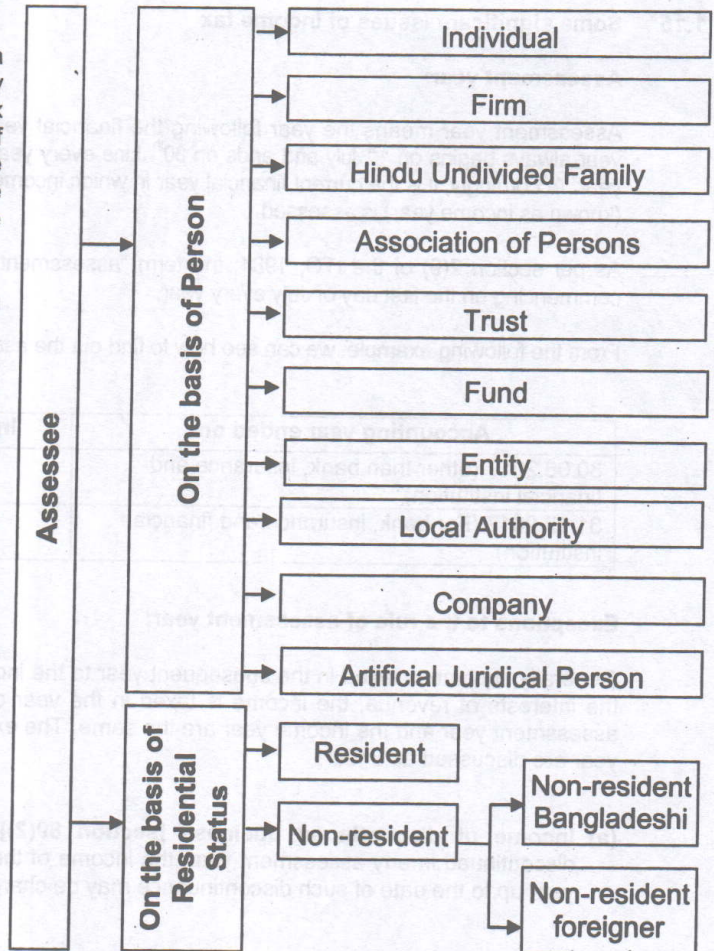
(a) An individual who has been in Bangladesh-

(i) for a period of, or for periods amounting in all to, 182 days or more in that year; or

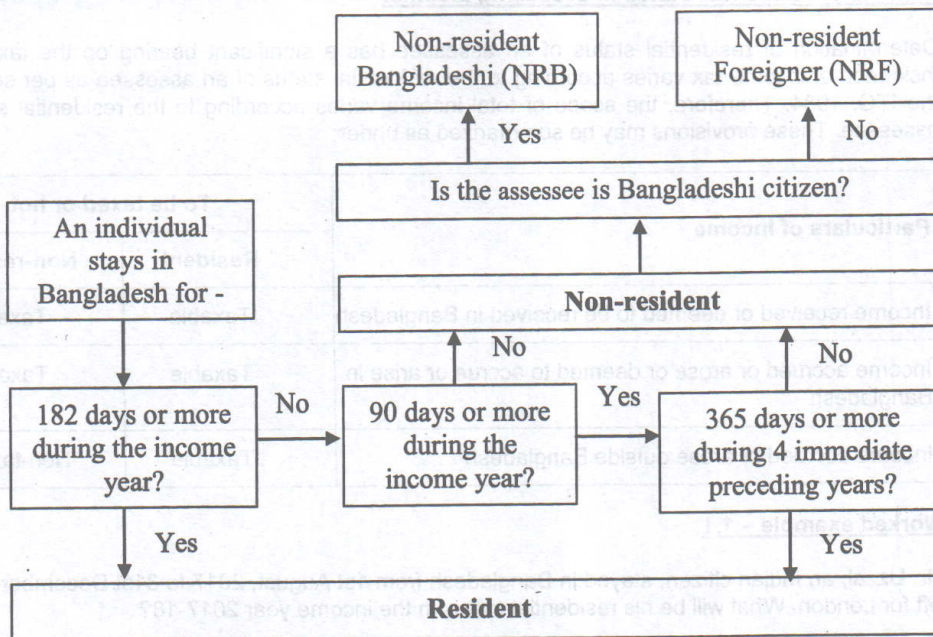
(ii) for a period of, or for periods amounting in all to 90 days or more in that year having previously been in Bangladesh for a period of, or for periods amounting in all to 365 days or more during 4 years preceding that year;

- (b) a Hindu un-dividend family, firm or other association of persons, the control and management of whose affairs is situated wholly or partly in Bangladesh in that year; and
- (c) a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year;
- and, under section 2(42), 'non-resident' means a person who is not a resident.

It is important to note here that the concept of resident as defined in the Income Tax Ordinance has nothing to do with the nationality of a particular individual. A foreign national may be treated as 'Resident' for a particular year if he or she fulfills the legal requirements as above, where as a Bangladeshi national may be treated as a 'Non-resident' if he, or she does not fulfill the said requirements.



To test residential status of an individual, the following flow chart will be helpful:



Taxation implication of resident or non-resident

Determination of residential status of an assessee has a significance bearing on the tax liability as incidence of income tax varies according to the residential status of an assessee. In this regard we can consider the following issues:

- I. To determine the amount of total income: Determination of total income is different for residents and non-residents. Global income of a resident is deemed as his "total income". Whereas only income earned in Bangladesh of a non-resident is deemed as his "total income".
 - ii. To determine minimum limit of taxable income: A resident and non-resident Bangladeshi has to pay tax if his total income is more than Tk. 2, 50,000 as per the Ordinance (in case of women, elderly citizens being 65 years old, the limit is Tk. 3,00,000, for disable persons the limit is Tk. 4,00,000 and for war wounded freedom fighter the limit is Tk. 4,25,000). The threshold limit in case of parents or legal guardian of any person with disability will be 50,000 taka more. If both father and mother of the disable person is assessee then any one will avail this benefit. But for a non-resident foreigner such minimum limit is not applicable.
- II. **Tax rate:** For an individual being a resident or non-resident Bangladeshi tax is calculated using the rates applicable for various levels of income. Such as, for first Tk. 2,50,000 @ 0%, for next Tk. 4,00,000 @ 10%. But a non-resident foreign individual has to pay tax at maximum rate i.e. @ 30%.
- III. **Investment tax rebate:** An individual being a resident or non-resident Bangladeshi gets tax rebate on investment allowance. But, for a non-resident foreigner no tax rebate is applicable.
- IV. **Tax liability:** The average tax rate applicable for a resident and non-resident Bangladeshi is less than that of a non-resident foreigner since tax is calculated using different tax rates (such as 10%, 15%, 20%, 25% and 30%). But a non-resident foreigner has to pay tax at maximum rate i.e. @30%.

Thus, determination of residential status of an assessee has a significant bearing on the tax liability as total income; and tax rate are found to vary according to the residential status of an assessee.

Impacts of residential status in assessing income:

Determination of residential status of an assessee has a significant bearing on the tax liability as incidence of income tax varies according to the residential status of an assessee as per section 17 of the ITO, 1984. Therefore, the scope of total income varies according to the residential status of an assessee. These provisions may be summarized as under:

Particulars of income	To be taxed or not	
	Resident	Non-resident
Income received or deemed to be received in Bangladesh	Taxable	Taxable
Income accrued or arose or deemed to accrue or arise in Bangladesh	Taxable	Taxable
Income accrued or arose outside Bangladesh	Taxable	Non-taxable

Worked example – 1.1

Mr. Uzzal, an Indian citizen, stayed in Bangladesh from 1st August, 2017 to 31st December, 2017 and left for London. What will be his residential status in the income year 2017-18?

Solution

Mr. Uzzal is a non-resident since his stay in Bangladesh during income year 2017-18 is $[31 + 30 + 31 + 30 + 31] = 153$ days which is less than required 182 days.

Worked example – 1.2

Mr. Arif, a Bangladeshi citizen, stayed in Bangladesh from 1st July, 2017 to 31st December, 2017 and left for Japan. What will be his residential status in the income year 2017-18?

Solution

Mr. Arif is a resident because he resides in Bangladesh during 2017-18 income year is $[31 + 31 + 30 + 31 + 30 + 31] = 184$ days, which is more than required 182 days..

Worked example – 1.3

Mr. Akash stayed in Bangladesh from 1st September, 2017 to 31st January, 2018 and left for Trinidad. He came back on 1st May 2018 and still staying in Bangladesh. What will be his residential status in the income year 2017-18?

Solution

Mr. Akash is a resident because he resides in Bangladesh September 2017 to January 2018 $[30 + 31 + 30 + 31 + 31] = 153$ days and from 1st May to 30th June 2018 $[31 + 30] = 61$ days. In total he stayed for $[153 + 61] = 214$ days in the income year 2017-18, which is more than required 182 days.

Worked example – 1.4

Mr. Rakesh Jason, a citizen of USA, has been staying in Bangladesh since 1st January, 2014. He leaves Bangladesh on 16 July, 2017 on a visit to USA and returns on 1st March, 2018. What will be his residential status in the income year 2017-18?

Solution

His stay in Bangladesh during the income year 2017-18 is:

July, 2017	18
March, 2018	31
April, 2018	30
May, 2018	31
June, 2018	30
Total staying	140 days

His stay in proceeding 4 income years:

2016-17	365
2015-16	366
2014-15	365
2013-14	181 [From 1 st January, 2014 to 30 th June, 2014]
	1,277 days

As his stay was more than 90 days in the income year 2017-18 and more than 365 days in the preceding 4 years, he is resident.

Worked example – 1.5

Mr. Juris Reinhardt, a British citizen comes every year to Bangladesh for 100 days since 2013-14 income year:

- Determine his residential status for the income year 2017-18.
- Will your answer be different if he comes to Bangladesh for 90 days instead of 100 days every year?

Solution

- He is a resident as he stayed in Bangladesh for 100 days (more than required 90 days) in the income year 2017-18 and 400 days (100×4) (more than required 365 days) in the preceding 4 income years i.e. 2013-14, 2014-15, 2015-16, 2016-17.
- Yes, the answer will be different. He will, in this case, be a non-resident as he stayed in Bangladesh for 90 days (equal to required minimum 90 days) in the income year 2017-18 but 360 days (90×4) (less than required 365 days) in the preceding 4 income years i.e. 2013-14, 2014-15, 2015-16, 2016-17 as he failed to fulfill the required conditions.

Worked example – 1.6

Mr. Jashim Uddin was outside Bangladesh from 20th August, 2016 for an employment contract valid for two years, i.e. from 1st August, 2016 to 31st July, 2018. Mr. Jashim Uddin did not come to Bangladesh at any time during the year 2017. He finally came to Bangladesh on 10th January, 2018 and did not go back. Determine his residential status for the income year 2017-18.

Solution

Total number of days Mr. Jashim Uddin stayed in Bangladesh during respective years:

2017-18 (From 10th January, 2017 to 30th June, 2017): $[22+28+31+30+31+30] = 172$ days.

2016-17 (From 1st July, 2016 to 20th August, 2016): $[31+20] = 51$ days.

2015-16 (From 1st July, 2014 to 30th June, 2015) = 365 days

2014-15 (From 1st July, 2013 to 30th June, 2014) = 365 days

2013-14 (From 1st July, 2012 to 30th June, 2013) = 365 days

Mr. Jashim Uddin is a resident since he fulfills the second condition. His duration of stay in Bangladesh during the income year 2017-18 is 172 days which is more than required 90 days in that year, and $[51+365+365+365]=1,146$ days during previous 4 years which is more than required 365 days.

Worked example – 1.7

Mr. Jayed provides the following particulars of his period of stay in Bangladesh over last 5 years:

Year	Days
2012-13	40
2013-14	55
2014-15	182
2015-16	200
2017-17	94
2017-18	110

- Determine his residential status for the income year 2017-18.
- What will happen if he stays for 85 days in the year 2017-18?
- What will happen if he stays for 80 days in the year 2015-16?
- What will happen if he stays for 185 days in the year 2017-18 and total 360 days during last four years?

Solution

- Mr. Jayed is a resident since he fulfills the second condition. His period of stay in Bangladesh during the income year 2017-18 is 110 days which is more than required 90 days in that year, and $[55+182+200+94] = 531$ days during previous 4 years which is more than required 365 days.
- Mr. Jayed would be a non-resident since he doesn't fulfill the second condition. His stay in Bangladesh during income year 2017-18 is 85 days which is less than required 90 days in that year, although he stayed $[55+182+200+94] = 531$ days during previous 4 years which is more than required 365 days.
- Mr. Jayed is a resident since he fulfills the second condition. His stay in Bangladesh during income year 2017-18 is 110 days which is more than required 90 days in that year, but his total stay during previous four years is 411 days $[55+182+80+94]$ which is more than the required 365 days.
- Mr. Jayed would be a resident since he fulfills the first condition. His stay in Bangladesh during income year 2017-18 is 185 days which is more than required 182 days of the first condition. In such a case, it is not important to know regarding his stay during 4 preceding years.

Worked example – 1.8

Dr. Hannan Sarker works as a professor in a University in Australia. He left Bangladesh in 2004. After 7 years of that, he first visited Bangladesh in the year 2011. Afterwards he visited Bangladesh every year to meet his parents. The following table is providing the information about the time period he stayed in Bangladesh in different years from 2011 to 2018. Determine his residential status during these income years:

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Date of entrance	16.09.11	12.10.12	11.02.14	09.12.14	01.07.15	28.12.16	15.07.17
Date of exit	28.03.12	19.03.13	14.03.14	01.03.15	28.09.15	28.06.17	12.03.18

Solution

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Date of entrance	16.09.11	12.10.12	11.02.14	09.12.14	01.07.15	28.12.16	15.07.17
Date of exit	28.03.12	19.03.13	14.03.14	01.03.15	28.09.15	28.06.17	12.03.18
Days of staying in current Year	15+31+30+31+31+29+28=195	20+30+31+31+28+19=159	18+14=32	23+31+28+1=83	31+31+28=90	4+31+28+31+30+31+28=183	17+31+30+31+30+31+31+28+12=241
Days of staying in previous 4 years	0	195	195+159=354	195+159+354=508	195+159+354+508=1116	159+32+83+90=364	32+83+90+364=569
Residential status	Resident	Non-resident	Non-resident	Non-resident	Resident	Resident	Resident

Worked example – 1.9

Alex Deliveries is a partnership firm whose

- Control and management of affairs is situated wholly in Bangladesh.
- Control and management of affairs is situated partly in Bangladesh.
- Control and management of affairs is situated wholly outside Bangladesh.

Determine the residential status of the firm.

Solution

- Resident; since control and management of affairs is situated wholly in Bangladesh.
- Resident; since control and management of affairs is situated partly in Bangladesh.
- Non-resident; since control and management of affairs is situated wholly outside Bangladesh.

Worked example – 1.10

DBH is non-banking financial institution in Bangladesh whose

- Control and management of affairs is situated wholly in Bangladesh.
- Control and management of affairs is situated partly in Bangladesh.
- Control and management of affairs is situated wholly outside Bangladesh.

Solution

- Resident; since control and management of affairs is situated wholly in Bangladesh.
- Non-resident; since control and management of affairs is situated partly in outside Bangladesh.
- Non-resident; since control and management of affairs is situated wholly outside Bangladesh.

Worked example – 1.11

Mr. Abdul has earned income from various sources during the income year 2017-18 which are as follows:

- Salary income earned and payable in Bangladesh Tk.100,000.
- Profit of Tk.40,000 from a business in London.
- Profit of Tk.60,000 from a business in Singapore. The Business has been managed and controlled wholly from Singapore.

4. Profit of Tk. 70,000 from a business in Dubai has not yet been brought in Bangladesh.

Compute the amount of total income of Mr. Abdul, assuming that he is a

- (a) Resident;
(b) Non-resident

Solution

Mr. Abdul
Income year: 2017-18;
Assessment year: 2018-19
Computation of total income

	Resident Tk.	Non-resident Tk.
1. Income earned in Bangladesh: Salary income	100,000	100,000
2. Foreign income: Profit from business in London	40,000	-
Profit from business in Singapore	60,000	-
Profit from business in Dubai	70,000	-
Total income	270,000	100,000

Worked example – 1.12

The following are the particulars of income of Mr. Zaman for the income year 2017-18:

- Rent from a property in Dhaka received in India Tk. 40,000
- Income from a business in USA controlled from Bangladesh Tk. 150,000
- Income from a business in Dhaka controlled from Pakistan Tk. 180,000
- Rent from a property in Canada received there but subsequently remitted to Bangladesh Tk. 60,000
- Interest from bank deposits in Canada Tk. 20,000
- Gifts received from his parents Tk. 45,000

Compute total income of Mr. Zaman, assuming that he is a

- (a) Resident;
(b) Non-resident

Solution

Mr. Zaman
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

	Resident Tk.	Non-resident Tk.
Rent from property in Bangladesh (wherever paid)	40,000	40,000
Income from business in USA controlled from Bangladesh (as income accrues outside Bangladesh)	150,000	-----
Income from business in Dhaka controlled from Pakistan (as it is received in Bangladesh)	180,000	180,000
Interest on bank deposits at Canada	20,000	-----
Note-1: Rent from a property in Canada received there but subsequently remitted to Bangladesh Tk. 60,000 is exempted from payment of tax as per 6 th Schedule (Part -A) para-48.		
Total income	<u>3,90,000</u>	<u>2,20,000</u>
Note-2: Gift is not income.		

Worked example – 1.13

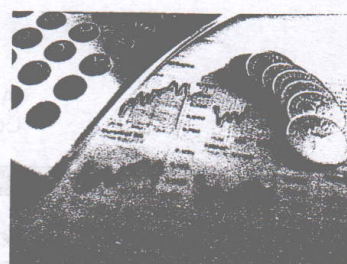
From the following particulars of Mr. Rahman for the income year 2017-18, compute total income if he is resident or non-resident:

- Salary income received in Bangladesh for services rendered in Afghanistan Tk. 40,000
- Income from profession in Bangladesh, but received in Nepal Tk. 150,000
- Profits earned from business in Chittagong Tk. 60,000
- Property income in South Africa Tk.1,80,000 (out of which Tk. 90,000 was remitted to Bangladesh)
- Agricultural income in Bhutan Tk. 20,000

Solution

Mr. Rahman
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Particulars	Resident Tk.	Non-resident Tk.
Income in Bangladesh		
(a) Salary <u>received</u> in Bangladesh	40,000	40,000
(b) Income from profession <u>accrues</u> in Bangladesh,	150,000	150,000
(c) Profits <u>earned</u> from business in Chittagong	60,000	60,000
Foreign income:		
(a) Property income in South Africa	90,000	-----
(b) Agricultural income in Bhutan	20,000	-----
Total income	<u>360,000</u>	<u>250,000</u>



Chapter 2

Administration and Tribunal

Contents

Introduction

Examination context

Topic list

2.1	Various income tax authorities
2.2	Appointment of income tax authorities
2.3	NBR and its functions
2.4	Subordination and control of income tax authorities
2.5	Power and functions of income tax authorities
2.6	Taxes Appellate Tribunal
2.7	Alternate Dispute Resolution (ADR)

Self-assessment questions

Introduction

Learning objectives

- Identify the different income tax authorities
- Powers and functions of NBR and other income tax authorities
- Powers and functions of the Taxes Appellate Tribunal.

Practical significance

There are presently 15 classes of income tax authorities. Each class of authorities has definite functions and responsibilities.

Taxes Appellate Tribunal is not the income tax authority. The power and functions of the Tribunal are normally exercised by its Benches constituted by the President of the Taxes Appellate Tribunal.

Understanding of the structure of income tax authorities and the Tribunal's procedures are essential for both tax advisers and the assessee for dealing the tax matters when required.

Stop and think

Do you have the clear idea of the income tax authorities? Did you know that in case of practical income tax cases, the knowledge on the tax authorities is very important?

Working context

The knowledge on the administrative structure of income tax authorities and the Tribunal's procedures covered by this chapter are important for both the tax payers and tax advisers to deal with it.

On behalf of assessee, the accountants are sometimes required to assist in submission of tax return, hearing to the court etc., so they should have a clear idea about income tax authorities and its powers and functions and the Tribunal's procedures in their mind to assist their clients in resolving relevant tax issues.

Syllabus links

The topics covered in this chapter are important to your understanding of income tax authorities and The Taxes Appellate Tribunal.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Show the structure of various income tax authorities
- Discuss the appointment procedures of income tax authorities
- Mention the powers and functions of different income tax authorities
- Identify the Taxes Appellate Tribunal.

Question practice

For question practice on this topic, please go to the suggested answers of this chapter.

2.0 ADMINISTRATION AND TRIBUNAL

Section overview

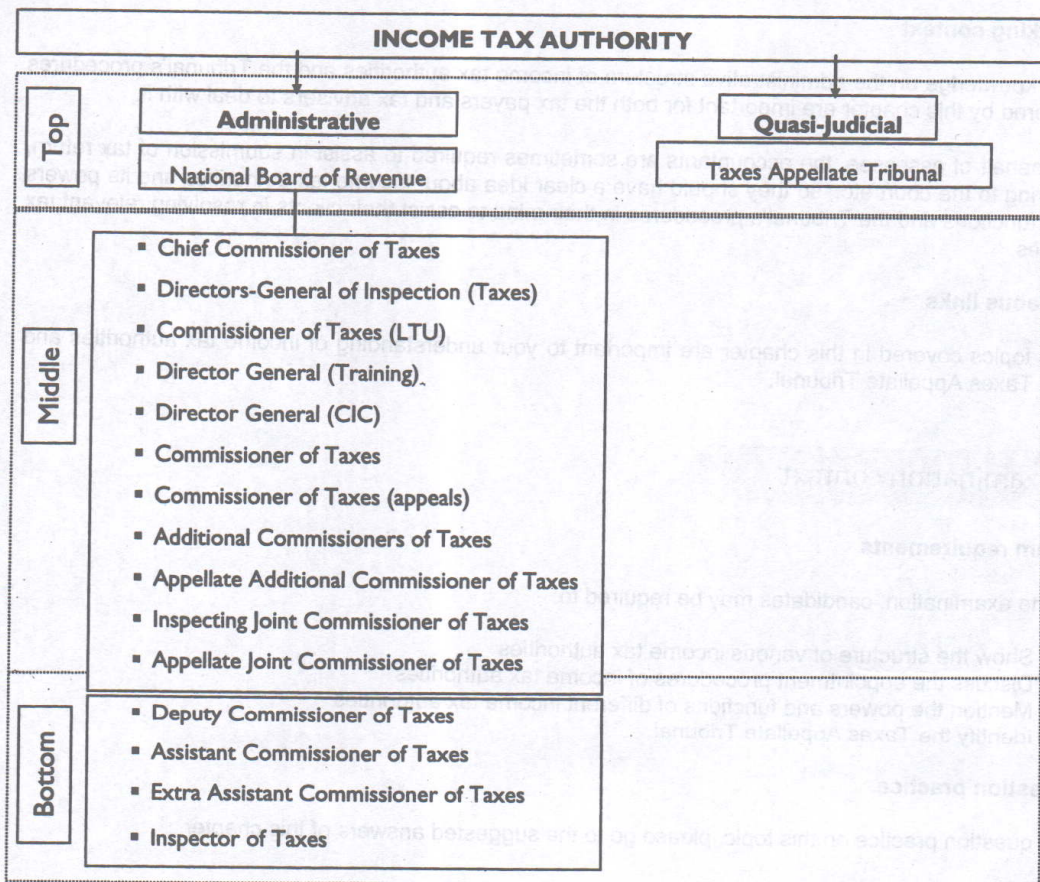
- ➔ There shall be 15 classes of income tax authorities for the purposes of the Ordinance.
- ➔ NBR is the highest income tax authority and Inspector is the lowest authority..
- ➔ Each class of authorities has definite powers and functions.

- Government shall constitute a Taxes Appellate Tribunal consisting of a President and other members.
- The procedures followed by the Taxes Appellate Tribunal in disposing of the appeals have been specified in the Taxes Appellate Tribunal (Procedure) Rules, 1985.
- The procedure followed by the Alternate Dispute Resolution (ADR) to resolve disputes.

2.1 Various income tax authorities:

Depending on the functions, income tax authorities may be classified into two major groups, namely,

- i) Administrative: Executive looking after the overall tax administration
- ii) Quasi-Judicial: They are not income tax authority, only exercising judicial function in appeal cases



2.2 Appointment of income tax authorities: section 4

- (1) Subject to the rules and orders of the Government regulating the terms and conditions of service of persons in public services and posts, appointment of income tax authorities shall be made in accordance with the provisions of the Ordinance [section 4(1)].

- (2) The Board may appoint Chief Commissioner of Taxes, Director General of Central Intelligence Cell, Director-General of Inspection, Commissioner of Taxes (Appeals), Commissioner of Taxes, Joint Commissioner of Taxes, Deputy Commissioner of Taxes, and Assistant Commissioner of Taxes and such other executive or ministerial officers and staff as it may think fit [section 4(2)].
- (3) Notwithstanding anything contained in the Ordinance, the Board may, with the approval of the government, appoint one or more persons having appropriate professional skill and experience to perform such functions as may be specified by an order issued in this behalf, and the person or persons so appointed shall be deemed to be an income tax authority for the purposes of the Ordinance [section 4(2A)].
- (4) Subject to such orders or instructions as the Board may, from time to time, issue in this behalf, any other income tax authority may appoint any income tax authority subordinate thereto and such other executive or ministerial officers and staff as may be necessary for assistance in the execution or its functions [section 4(3)].

2.3 NBR and its functions

National Board of Revenue (NBR) is the highest executive tax authority. It is a statutory body and its members are appointed by the Government to manage, control and supervise the whole income tax department. The NBR is empowered to make necessary rules concerning income tax matters. It cannot act by issuing any instructions to be construed as interference to the authority of judicial personnel like the Commissioner of Taxes (Appeals), Appellate Additional Commissioner of Taxes, Appellate Joint Commissioner of Taxes and the Taxes Appellate Tribunal when they exercise their judicial powers.

Main functions of the NBR

1. To declare any foreign un-incorporated association as a company for the purposes of the Ordinance. [section, 2(20)(c)]
2. To delegate powers to the Inspecting Additional Commissioner of Taxes to exercise the powers of a Commissioner and to the Appellate Additional Commissioner of Taxes to exercise the powers of a Commissioner (Appeals) [section 4A]
3. To determine the functions of the Director General of Inspection, the Commissioner (Appeals), the Appellate Joint Commissioner, the Commissioner (LTU), the Inspecting Joint Commissioner and to determine the jurisdiction of Income Tax authorities. [section 6]
4. To issue orders, directions or instructions to all officers and other persons engaged in the performance of any functions under the Ordinance. [section 8]
5. To determine place of assessment when jurisdiction of an assessee falls more than in one tax zone. [section 173A]
6. To direct to make payment of tax deducted at source within the specified time.[sec 59]
7. To recognize and authorize chartered accountant, cost and management accountant, income tax practitioner and members of other accounting bodies for appearance in income tax matters as authorized representative of the assessee. [section 174 (2)]
8. To take disciplinary action against any authorized representative in case of professional misconduct. [section 174 (3)]
9. To allow tax holiday or tax exemption to approved undertakings. [sec. 46B and 46C]
10. To accord and withdraw recognition to Superannuation Fund, Pension Fund and Gratuity Fund. [1st Schedule part A, B & C]
11. To reward employees of the tax department or any other person for detection and collection of tax evasion. [section 184]

2.4 Subordination and control of income tax authorities: section 5

- (1) The Chief Commissioner of Taxes, Director-General of Inspection, Commissioners (Appeals) and Commissioner shall be subordinate to the Board.
- (2) The Additional Commissioner of Taxes, Joint Commissioner of Taxes and Inspectors shall be subordinate to the Commissioners, or the Commissioners (Appeals), as the case may be, within whose jurisdiction they are appointed to perform their function.

However, no order, direction or instruction shall be given so as to interfere with the discretion of the Appellate Joint Commissioners or the Commissioners (Appeals), in the exercise of their appellate functions.

- (3) The Deputy Commissioners of Taxes and Inspectors shall be subordinate to the Inspecting Joint Commissioner within whose jurisdiction they perform their functions.
- (4) The Inspectors shall be subordinate to the Deputy Commissioners of Taxes within whose jurisdiction they perform their functions.

2.5 Power and functions of income tax authorities

Jurisdiction of income tax authorities: section 6

As per section 6(1), subject to the provision of the Ordinance-

(aa) the **Director-General of Inspection** shall perform the following functions, namely:

- (i) carry out inspection of income tax cases;
- (ii) Investigate or cause investigation to be carried out in respect of cases involving leakage of revenue or evasion of taxes;
- (iii) Carry out audit of cases of offices involving income tax cases only;
- (iv) furnish annual report about the working of income tax officers dealing with revenue matters to the Board by the 31st day of December following the end of the financial year to which it relates; and
- (v) other functions as may be assigned to them by the Board

(aaa) the **Director General of Central Intelligence Cell** shall perform the following functions, namely:-

- (i) carry out intelligence works to gather information about taxpayers;
- (ii) analyze information gathered through intelligence work vis-a-vis concerned income tax records;
- (iii) detect tax evasions, concealments of income and offences as described in chapter XXI of Income Tax Ordinance 1984;
- (iv) carry out investigations to prove tax evasion or concealment or any other irregularities relating to taxes and to collect evidences in support of tax offences or tax frauds for recovery of tax with penalty and to suggest prosecutions in fit cases;
- (v) to carry out functions as authorized by any other law.

(b) the Commissioners or the Commissioner (Appeals) and the Appellate Joint Commissioners shall perform their functions in respect of such areas, or such incomes or classes of incomes, as the Board may assign to them [Section 6(1)(b)];

(c) the Commissioner (Large Taxpayer Unit) shall perform his functions in respect of such areas, or such persons, or such cases or classes of cases or such incomes or classes of incomes, as the Board may assign to him [Section 6(1)(bb)];

- (d) the Inspecting Joint Commissioners and the Deputy Commissioners of Taxes shall perform their functions in respect of such areas, or such persons for classes of persons, or such cases or classes of cases, or such incomes or classes of incomes as the Commissioners to whom they are subordinate may assign to them [Section 6(1)(c)]; and
- (e) other incomes tax authorities shall perform such functions as may be assigned to them by the income tax authority to whom they are subordinate [Section 6(1)(d)].
- (2) (a) Any area or other jurisdiction or functions assigned to an income tax authority under section 6(1) may be modified or varied, or may be transferred to any other income tax authority with respect to areas, persons or classes of persons or cases or classes of case, or proceeding or classes of proceedings;
- (b) any such transfers as is referred to in section 6(2)(a) may be made at any stage of the proceedings and further proceedings may be commenced from the stage at which such transfer takes place.
- (3) Where more income tax authorities than one have been assigned the same functions in respect of any area, or persons or classes of persons, or cases or classes of cases, or incomes or classes of incomes, they shall perform those functions in accordance with such allocation or distribution of work as the authority assigning the functions may make.
- (4) The powers of the Board, Commissioners and Deputy Commissioner of Taxes, to assign any case to any authority, or to transfer any case from one authority to another or to perform any function or functions under this section, shall include the power in respect of all or any proceedings relating to such case; and except as provided in section 6(5), no such assignment, transfer or performance of functions shall be called in question by or before any court or other authority.
- (5) Any person aggrieved by any order passed under section 6 may, within thirty days of such order, make a representation-
 - (a) to the Inspecting Joint Commissioner if the order was passed by a Deputy Commissioner of Taxes;
 - (b) to the Commissioner, the Commissioner (Appeals), if the order was passed by an Inspecting Joint Commissioner; and
 - (c) to the Board if the order was passed by a Commissioner ; and any order passed on such representation shall be final.

Exercise of jurisdiction by successor: section 7

Where, in respect of any proceeding under the Ordinance, an income tax authority is succeeded by another, the income tax authority so succeeding may continue the proceeding from the stage at which it was left by his predecessor.

Officers etc. to follow instructions of the Board: section 8

All officers and other persons engaged in the performance of any functions under the Ordinance shall, in the matter of discharging those functions, observe and follow such orders, directions or instructions as the Board may issue from time to time.

However, no order, directions or instructions shall be given so as to interfere with the discretion of the Appellate Joint Commissioner or the Commissioner (Appellate) in the exercise of their appellate functions.

Guidance to the Deputy Commissioner of Taxes: section 9

In the course of any proceedings under the Ordinance, the Deputy Commissioner of Taxes may be assisted, guided or instructed by any income tax authority to whom he is subordinate or any other person authorized in this behalf by the Board.

Exercise of assessment functions by the Inspecting Joint Commissioners and the Inspecting Additional Commissioners: section 10

The Commissioner may, with prior approval of the Board, by general or a special order in writing, direct that in respect of all or any proceedings relating to specified persons of classes or persons within his jurisdiction, the powers and function of the Deputy Commissioner of Taxes, the Inspecting Joint Commissioner, the Inspecting Additional Commissioner and the Commissioner under the Ordinance shall be exercised by the Inspecting Joint Commissioner, the Inspecting Additional Commissioner, the Commissioner and the Board, respectively and for the purpose of any proceedings in respect of such cases or persons referred in the Ordinance or the rules made there under to the Deputy Commissioner of Taxes, the Inspecting Joint Commissioner, the Inspecting Additional Commissioner or the Commissioner shall be deemed to be references to the Inspecting Joint Commissioner, the Inspecting Additional Commissioner, the Commissioner and the Board, respectively.

2.6 Taxes Appellate Tribunal

Establishment of Appellate Tribunal: section 11

- (1) For the purpose exercising the functions of the Taxes Appellate Tribunal under the Ordinance, the Government shall establish a Taxes Appellate Tribunal consisting of a President and such other members as the Government may, from time to time, appoint [section 11(1)].
- (2) A person shall not be appointed as a member of the Taxes Appellate Tribunal unless-
 - (i) he was or is a member of the Board; or
 - (ii) he was or is a Commissioner of Taxes having at least 1 year experience as a Commissioner.; or
 - (iii) he is a chartered accountant and practiced professionally for a period not less than 8 years; or
 - (iv) he is a cost and management accountant and practiced professionally for a period not less than 8 years; or
 - (v) he is an income tax practitioner within the meaning of section 174(2)(f) and practiced professionally for a period not less than 20 years; or
 - (vi) he is a professional legislative expert having experience for a period not less than 8 years in the process of drafting and making financial and tax laws; or
 - (vii) he is an advocate and practiced professionally for not less than 10 years in any income tax office. [section 11(3)]
 - (ix) he is, was or has been a District Judge.
- (4) The Government shall appoint a member of the Appellate Tribunal to be the President thereof who is a member of the Board or holds current charge of a member of the Board [section 11(4)].

Exercise of power of the Tribunal by Benches: section 12

- (1) Unless the president in any particular case or class of cases otherwise directs, the powers and functions of the Appellate Tribunal shall be exercised by Benches of the Appellate Tribunal, hereinafter referred to as Bench, to be constituted by the President.
- (2) A Bench shall be so constituted that it has not less than two members.

Decision of Bench: section 13

- (1) Subject to the provisions of sections 13(2) and (3), the decision of bench in any case or on any point shall be given in accordance with the opinion of the majority of its members.
- (2) Any point on which the members of a Bench are equally divided shall be stated in writing and shall be referred by the president to one or more other members of the Appellate Tribunal for hearing and the point shall be decided according to the majority of the members of the Appellate Tribunal who have heard it including those who first heard it.
- (3) Where there are only two members of the Appellate Tribunal and they differ in any case, the Government may appoint an additional member of the Appellate Tribunal for the purpose of hearing of the case and the decision of the case shall be given in accordance with the opinion of the majority of the members of the Taxes Appellate Tribunal as constituted with such additional member.

Exercise of power by one member: section 14

Notwithstanding anything contained in section 12, the Government may direct that the powers and functions of the Appellate Tribunal shall be exercised by any one of its member, or members or by two or more members jointly or severally.

Regulation of procedure of the Appellate Tribunal: section 15

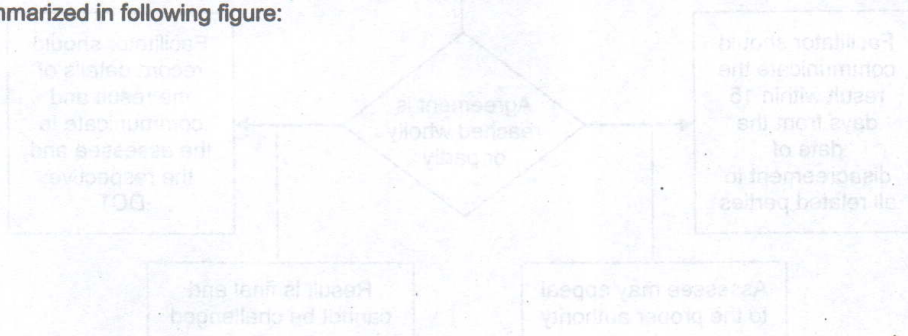
- (1) Subject to the provisions of the Ordinance, the Appellate Tribunal shall regulate its own procedure and the procedure of its Benches in matters arising out of the discharge of its function including the places at which a Bench shall hold its sittings. [section 15]
- (2) A Bench shall hold its sittings at its headquarters or such other place as the President may consider convenient [TATP Rule 3].
- (3) A Bench shall hear and determine such appeals and applications made under the Ordinance as the President may, by general or special order, direct [TATP Rule 4].
- (4) The office of the Tribunal shall, subject to any special order of the President, observe the same office hours and holidays as the office of the Supreme Court (High Court Division) at Dhaka [TATP Rule 5].
- (5) The language of the Tribunal shall be English [TATP Rule 6].

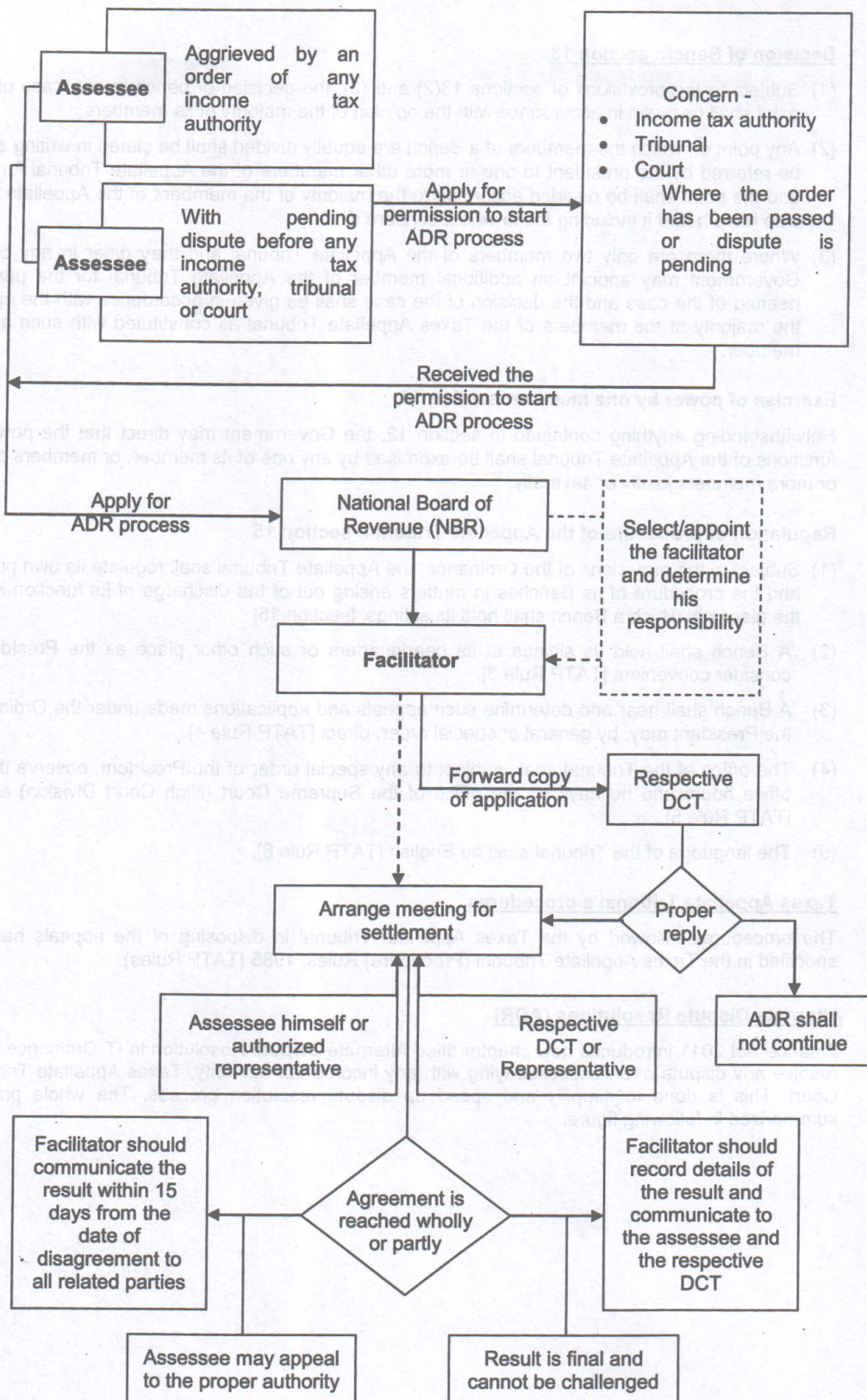
Taxes Appellate Tribunal's procedures

The procedures followed by the Taxes Appellate Tribunal in disposing of the appeals have been specified in the Taxes Appellate Tribunal (Procedure) Rules, 1985 (TATP Rules).

2.7 Alternate Dispute Resolutions (ADR)

Finance Act 2011 introduces new chapter titled Alternate Dispute Resolution in IT Ordinance, 1984 to resolve any dispute of an assessee lying with any income tax authority, Taxes Appellate Tribunal, or Court. This is done to simplify and speed up dispute resolution process. The whole process is summarized in following figure:





An assessee may apply for resolution of the dispute through the ADR process if aggrieved by an order of an income tax authority or if a dispute is pending before any income-tax authority, tribunal or court. In case of any pending dispute, the assessee is required to get permission from the authority where it is pending in writing before applying for ADR and if approval is received and assessee applies for ADR, the matter shall remain stayed during ADR negotiation process.

To resolve dispute in an alternative way, the Board may select or appoint Facilitator and determine his duties and responsibilities. The assessee shall be allowed to negotiate himself personally or along with an authorized representative, with the Commissioner's Representative for the concerned dispute under the facilitation and supervision of such Facilitator.

Upon receiving the application of ADR, the Facilitator shall forward a copy of the application to the respective Deputy Commissioner of Taxes and also call for his opinion on the grounds of the application. If the Deputy Commissioner of Taxes fails to give his opinion regarding fulfillment of the conditions, the Facilitator may notify in writing the applicant and the Commissioner of Taxes or the Commissioner's Representative to attend the meetings for settlement of disputes on a date mentioned in the notice. Where an agreement is reached, either wholly or in part, between the assessee and the Commissioner's Representative, the Facilitator shall record, in writing, the details of the agreement sign and shall communicate the same to the assessee and the concerned Deputy Commissioner of Taxes.

However, where no agreement is reached or the dispute resolution is ended in disagreement between the assessee and the concerned Commissioner's Representative for noncooperation of either of the parties, the Facilitator shall communicate it within fifteen days from the date of disagreement, to the applicant and the Board, the concerned court, Tribunal, appellate authority and income tax authority, as the case may be, about such unsuccessful dispute resolution.

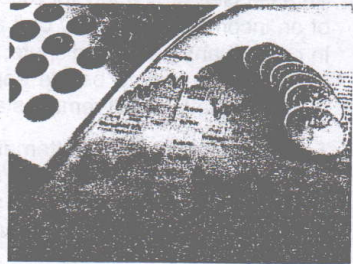
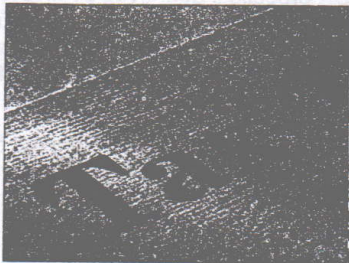
Where an agreement is reached, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or any other income tax authority. Where an agreement is not reached, the assessee may prefer an appeal in following manner:

Dispute arises out of an order of	Appeal to
Deputy Commissioner of Taxes	Appellate Joint Commissioner of Taxes OR Appellate Additional Commissioner of Taxes OR Commissioner of Taxes (Appeals)
Appellate Joint Commissioner of Taxes OR Appellate Additional Commissioner of Taxes OR Commissioner of Taxes (Appeals)	Taxes Appellate Tribunal

The assessee-applicant may also appeal to the respective appellate authority or court from where he has got permission to apply for ADR.

Self-assessment questions

1. What are the income tax authorities?
2. Discuss the powers and functions of the Commissioner of Taxes.
3. Discuss briefly the powers and functions of the Deputy Commissioner of Taxes.
4. How Taxes Appellate Tribunal established?
5. What are the qualifications required for appointment as a Member of the Taxes Appellate Tribunal?
6. How ADR can be used to resolve the disputes?



Chapter 3

Charge of income tax

Contents

Introduction

Examination context

Topic list

3.1	Charge of income tax
3.2	Charge of surcharge
3.3	Charge of additional tax
3.4	Charge of minimum tax
3.5	Scope of the total income
3.6	Income deemed to accrue or arise in Bangladesh
3.7	Un-explained investments etc. to be treated as deemed income
3.8	Special tax treatment in respect of some investments

Introduction

Learning objectives

- Identify the ways of charging income tax
- Illustrate the charge of surcharge, additional tax and minimum tax
- Recognize the scope of total income
- Recognize the different types of deemed income

Practical significance

Income tax shall be charged levied, paid and collected at different rates in respect of the total income in accordance with the provisions of the Ordinance. It may be deducted at source, or paid or collected in advance. The rates of tax can vary on the basis of income and types of assessee. The assessee may be required to pay surcharge, additional tax or minimum tax depending on the situation. Reduced tax rate is also applicable in certain cases.

The scope of total income of a resident and non-resident includes the sources and forms of income of these persons of any income year.

Stop and think

Think about different ways of charging income tax and identify the similarity and differentiation of the scope of income of a resident and a non-resident. Do you realize that the different types of unexplained investment will be deemed as income under different heads? Do you acknowledge about the special tax treatment in respect of some investment?

Working context

Before determining individual and corporate tax, the rate of tax and the scope of total income need to be identified. Based on residential status the scope of total income varies. Unexplained investments are also taxable under respective heads. Some opportunities are given through Finance Act 2013 to the investors in certain cases of investment in the form of special tax treatment.

An accountant will be expected to understand the scope of total income, deemed income, applicable tax rate, and special tax treatment and to give advice on how the total income of individual and company can be determined. This can also suggest their clients to take the facility of special tax treatment by investing in those specific areas.

Syllabus links

You will be familiar with the charge of income tax and to prepare for the application level and also for the case study.

Detailed knowledge on this issue helps you to understand the progression level and stage of your study.

You will be using this knowledge again when you tackle the taxation paper later on in the Professional Stage and it will also underpin the technical aspects at the Advanced Stage.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Clarify how income tax shall be charged
- Define the surcharge, withholding tax, additional tax and minimum tax
- Determine scope of total income depending on the residential status.
- Identify the income deemed to accrue or arise in Bangladesh
- Recognize different unexplained investment etc., deemed to be taxable income
- Demonstrate the different category of investment for which special tax treatment are allowed

Question practice

For question practice on these topics, go to the suggested question and answer.

Examiner's comments on how students tackle questions

Students need to take care of the sources of total income including different classes of unexplained investment, as these are required for calculation of total income of an assessee.

CHARGE OF TAX

Section overview

- ➔ Tax shall be charged at the rate or rates according to the Finance Act.
- ➔ The rates of tax can be varied on the basis of income and types of assessee.
- ➔ The assessee may be required to pay surcharge, simple interest, minimum tax etc..
- ➔ Tax may be deducted at source, or paid or collected in advance.
- ➔ Unexplained investments can be considered under the scope of total income.
- ➔ The scope of total income of a resident and non-resident are different.

3.0 Introduction

Any income has to be brought under respective heads of income under section. 20 and can be charged to tax only if it is so chargeable under the computing section corresponding to that head of income. The liability to tax arises by virtue of this charging section which does not depend on assessment; assessment order only quantifies the liability which is finally created by the charging section. Following basic principles can be deduced from the analysis of the charging section:

- (i) Income tax is to be charged at the rate or rates fixed for the year by the Finance Act. The liability to tax does not arise until the annual Finance Act is passed [*Kamakhya Narayan Singh V CIT (1946) ITR 683*]. Section 183 provides that if on the first day of July in any year provision has not been made by any Act for the charging of income tax for that year, the provision in force in the immediate preceding year or the provision proposed in the Finance Bill then before Parliament, whichever is more favorable to the assessee, shall apply until the new Finance Act is passed.
- (ii) Income should be calculated with reference to the income year but tax rate/rates should be the rate/rates applicable to respective assessment year. The use of the expression charged both in the Finance Act and Income Tax Ordinance does not mean that the income is charged to income tax under both the Act and Ordinance. They are used in different senses. The tax will be charged in accordance with and subject to the provisions of the Income tax Ordinance and the said charge shall be in accordance with the rates prescribed in the Finance Act [*Kesoram Industries and Cotton Mills LTD V C. W. T Calcutta (1466) ITR, 767*].
- (iii) The income to be taxed is the income of the income year and not of the assessment year. Since tax is levied on the actual income of the income year, the sources must be taken as they existed during the income year it is immaterial whether the source of income actually exists in the assessment year [*Muthappa Chettian V CIT (1945) ITR, 311*]. However, there are exceptions for a discontinued business, for persons leaving Bangladesh etc. when income year is the assessment year
- (iv) The charge is on every person as stated in section. 2 (46) i. e. an individual, a firm, an association of persons, a Hindu undivided family, a local authority, a trust, a fund, a company and any other artificial juridical person. Estoppel is a rule of evidence, not a cause of action and it cannot be the basis of liability under the Income Tax Ordinance. So, an assessment cannot be made on a stranger to the income, merely he agrees or desires to be assessed on it [*Asit Kumer Ghose V CIT, ITR, 576*].
- (v) The tax is levied on the total income of the assessee computed in the manner laid down in specified sections and subject to the provisions of this Ordinance. It will be for the assessee to produce materials to hold that a receipt is of a casual or capital nature not chargeable to tax and for the Revenue to consider the materials and arrive at a reasonable conclusion.

- (vi) Tax is imposed in three stages. There is the declaration of a liability that is the part of the statute which determines who is liable in respect of what. Next, there is the assessment liability that does not depend on the assessment. That ex-hypothesis has already been fixed. But assessment particularizes the exact sum which a person is liable to pay. Lastly, the recovery comes if the person taxed does not pay voluntarily.

3.1 Charge of income tax: section 16

- (1) Where an Act of Parliament provides that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate or those rates shall, subject to the provisions of that Act, be charged levied, paid and collected in accordance with the provisions of the Ordinance in respect of the total income of the income year or income years, as the case may be, of every person. However, where under the provision of the Ordinance income tax is to be charged in respect of the income of a period other than the income year, income tax shall be charged, levied, paid and collected accordingly.
- (2) Where under the provisions of the Ordinance income tax to be deducted at source, or paid or collected in advance, it shall be deducted, paid and collected accordingly.
- (3) Notwithstanding anything contained in section 16(1), income tax shall be charged at the rates specified in the Second Schedule in respect of-
 - (i) a non-resident foreign person, not being a company;
 - (ii) any income classifiable under the head 'capital gains'; and
 - (iii) any income by way of 'winnings' referred to in section 19(13).

3.2 Charge of wealth surcharge: section 16A

- (1) Where any Act of Parliament enacts that a surcharge on income shall be charged for any assessment year at any rate or rates, surcharge at that rate or those rates, subject to the provisions of that Act, shall be charged for that year in respect of the total income of the income year or the income years, as the case may be, of every person.
- (2) All the provisions of the Ordinance relative to charge, assessment, deduction of tax at source, payment of tax in advance, collection, recovery and refund of income tax shall, so far as may be, apply to the charge, assessment, deduction at source, payment in advance, collection, recovery and refund of the surcharge.

Surcharge on individuals reporting net wealth of more than Tk. 2.25 crore

Finance Act 2011 introduces surcharge @ 10% on taxes payable before charging such surcharge for individual assessee who reports net wealth more than Tk. 2 crore in Form I.T.10B (Statement of assets, liabilities and expenditure) at the time of submitting income tax return.

As per Finance Act, 2018 wealth surcharge is to be paid on tax payable at the following rate:

- | |
|---|
| <ol style="list-style-type: none">1. 10% if net wealth exceeds Tk. 2.25 crore but does not exceed Tk.5 crore or ownership of 2 motor cars or ownership of House Property having an aggregate area of 8,000 sqft in a city corporation area.2. 15% if net wealth exceeds Tk. 5 crore but does not exceed Tk.10 crore3. 20% if net wealth exceeds Tk. 10 crore but does not exceed Tk.15 crore,4. 25% if net wealth exceeds Tk. 15 crore but does not exceed Tk.20 crore,5. 30% if it exceeds Tk.20 crore.6. 2.5% on income in case of tobacco manufacturing business |
|---|

But in any situation minimum surcharge will be Tk.3,000 if net wealth exceeds Tk.2.25crore and Tk. 5,000/ if net wealth exceeds Tk.10 crore

Illustration 1

Tax liability after investment tax rebate	Tk. 45,000
Net wealth as per last assessment year	Tk. 20,78,000
Accretion in net wealth during current year	Tk. 8,23,000
Net wealth up to this assessment year	Tk. 29,01,000
Surcharge	Nil (net wealth is less than Tk. 2.25 crore)
Total tax liability (no surcharge)	Tk. 45,000

Illustration 2

Tax liability after investment tax rebate	Tk. 160,000
Net wealth as per last assessment year	Tk. 1,86,23,000
Accretion in net wealth during current year	Tk. 44,08,000
Net wealth up to this assessment year	Tk. 2,30,31,000
Surcharge	Tk. 16,000 (10% of Tk. 160,000)
Total tax liability (including surcharge)	Tk. 176,000 (Tk. 160,000 + Tk. 16,000)

Illustration 3

Tax liability after investment tax rebate	Tk. 8,00,000
Net wealth as per last assessment year	Tk. 8,81,23,000
Accretion in net wealth during current year	Tk. 24,08,000
Net wealth up to this assessment year	Tk. 9,05,31,000
Surcharge	Tk. 1,20,000 (15% of Tk. 8,00,000)
Total tax liability (including surcharge)	Tk. 9,20,000 (Tk. 8,00,000 + Tk. 1,20,000)

3.3 Charge of additional tax: section 16B

Notwithstanding anything contained in any other provision of IT Ordinance, 1984, where any person employs or allows, any foreigner to work at his business or profession, without prior approval of the BIDA or any competent authority of the Govt. such person shall be charged additional tax @ 50% of tax payable or Tk.5,00,000 whichever is higher.

Illustration-1

Company B, a private limited company, employs one foreign employee to work at its factory who has no valid work permit. Company B will be liable to pay additional tax in the following way:

	Taka	Taka
Income	2,00,00,000/	
Income tax @ 35%:		70,00,000/
Additional tax @ 50% of tax or Tk.5,00,000 whichever is higher		35,00,000/
Total tax to be paid		1,05,00,000/

3.4 Charge of minimum tax for companies: section 16BBB + section 82C(4)

Every company shall, irrespective of its profits or loss in an assessment year for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of earlier year or years or the claiming of allowances or deductions (including depreciation) allowed under IT Ordinance, 1984 be liable to pay minimum tax at the following rates.

Classes of assessee		Rate of minimum tax on gross receipt
1	Manufacturer of cigarette, bidi, chewing tobacco, smokeless tobacco or any other tobacco products.	1%
2	Mobile phone operator	0.75%
3	Others	0.60%

However the rate would be 0.10% of gross receipt in case of new industry engaged in manufacturing of goods for the 1st 3 income years.

For the purposes of this section, 'gross receipts' means-

- all receipts derived from the sale of goods;
- all fees or charges for rendering services or giving benefits including commissions or discounts;
- all receipts derived from any heads of income.

Illustration 1

In the assessment year 2018-19, company X reports loss of Tk. 10,00,000 with annual turnover of Tk. 1,00,00,000. The company is required to pay Tk. 60,000 (0.60% of Tk. 1,00,00,000) as minimum tax. Remember, the company has made a loss, still it requires to pay tax.

Illustration 2

In the assessment year 2018-19, company X, a publicly traded company, reports taxable profit of Tk. 1,00,000 with annual turnover of Tk. 1,00,00,000. The company is required to pay Tk. 60,000 (0.60% of Tk. 1,00,00,000) as minimum tax. Because tax on regular income at regular rate amounts to Tk. 25,000 that is lower than Tk. 60,000.

Illustration 3

In the assessment year 2018-19, company X, a publicly traded company, reports taxable profit of Tk. 10,00,000 with annual turnover of Tk. 1,00,00,000. Tax liability of the company will be Tk. 2,50,000 (25% of Tk. 10,00,000) applying regular tax rate which is higher than minimum tax of Tk. 60,000 (0.60% of Tk. 1,00,00,000).

Illustration 4

In the assessment year 2018-19, company A, a publicly traded company, reports total income of Tk. 3,00,000 from business, house property and other sources. Annual assessed business turnover is Tk. 10,00,000, property income Tk. 2,00,000 and receipt from other sources i.e. interest on bank deposit Tk. 1,20,000.

Here, the gross receipt of the company would be:

	Heads of receipts	Amount (TK)
(a)	Receipts derived from the sale of goods (turnover)	10,00,000
(b)	Income from house property (rental receipts not known)	2,00,000
(c)	Income from other sources (interest on bank deposit)	1,20,000
	Total	= 13,20,000

Tax liability on regular income at regular tax rate is Tk. 75,000 (25% of Tk. 3,00,000). However, minimum tax is Tk. 7,920 (0.60% of Tk. 13,20,000). As regular tax is higher than minimum tax, tax liability of the company will be Tk. 75,000.

3.5 Charge of minimum tax for partnership firm: section 16BBB + section 82C(4)

Every partnership firm having gross receipts of more than Tk. 50,00,000/ will also be required to pay minimum tax @0.60% on its gross receipt or tax calculated on the basis of total income whichever is higher.

3.6 Scope of the total income: section 17:

- (1) The total income of any income year of any person includes-
 - (a) in relation to a person who is a resident, all income, from whatever source derived, which-
 - (i) is received or deemed to be received in Bangladesh by or on behalf of such person in such year; or
 - (ii) accrues or arises, or is deemed to accrue or arise to him in Bangladesh during that year; or
 - (iii) accrues or arises to him outside Bangladesh during that year, and
 - (b) in relation to a person who is a non- resident, all income from whatever source derived, which-
 - (i) is received or deemed to be received in Bangladesh by or on behalf of such person in such year; or
 - (ii) accrues or arises, or is deemed to accrue or arise to him in Bangladesh during that year.
- (2) Notwithstanding anything contained in section 17(1), where any amount consisting of either the whole or a part of any income of a person has been included in his total income or the basis that it has accrued or arisen, to him any year, it shall not be included again in his total income on the ground that it is received or deemed to be received by him in Bangladesh in another year.

3.7 Income deemed to accrue or arise in Bangladesh: section 18

The following income shall be deemed to accrue or arise in Bangladesh, namely:

- (1) any income which falls under the head 'salaries', wherever paid if-
 - (a) it is earned in Bangladesh; or
 - (b) it is paid by the Government or a local authority in Bangladesh to a citizen of Bangladesh in the service of such Government or authority;
- (2) any income accruing or arising, whether directly or indirectly, through or from-
 - (a) any permanent establishment in Bangladesh;
 - (b) any property, asset, right or other source of income including intangible property in Bangladesh; or
 - (c) transfer of any assets situated in Bangladesh;
 - (d) the sale of any goods or services by any electronic means to purchasers in Bangladesh or
 - (e) any intangible property used in Bangladesh.
- (3) any dividend paid outside Bangladesh by a Bangladeshi company;
- (4) any income by way of interest payable-

- (a) by the Government: or
 - (b) by a person who is a resident, except where the interest payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside Bangladesh or for the purpose of making or earning any income from any source outside Bangladesh; or
 - (c) by a person who is a non-resident where the interest is in respect of any debt incurred or moneys borrowed and used, for the purposes of a business or profession carried on by such person in Bangladesh or for the purpose of making or earning any income from any source in Bangladesh.
- (5) any income by way of fees for technical services payable-
- (a) by the Government: or
 - (b) by a person who is a resident, except where such fees are payable in respect of services utilized in a business or profession carried on by any such person outside Bangladesh or for the purpose of making or earning any income from any source outside Bangladesh; or
 - (c) by a person who is non- resident, where such fees are payable in respect of services utilized in a business or profession carried on by such person in Bangladesh or for the purpose of making or earning any income from any source outside Bangladesh.
- (6) any income by way of royalty payable-
- (a) by the Government: or
 - (b) by a person who is a resident, except where royalty is payable in respect of any right, property or information used or services utilised for the purpose of a business or profession carried on by any such person outside Bangladesh or for the purpose of making or earning any income from any source outside Bangladesh; or
 - (c) by a person who is a non-resident, where royalty is payable in respect of any right, property or information used or services utilised for the purpose of a business or profession carried on by any such person in Bangladesh or for the purpose of making or earning any income from any source in Bangladesh

When the person entitled to such income is not resident in Bangladesh, he may be charged to tax in his own name or in the name of his agent. The Deputy Commissioner of Taxes must give hearing to a person whom he wants to treat as agent of the non-resident person.

A person treated as an agent of a non-resident is empowered under the law to deduct and retain any amount, which may be due as tax from the non-resident person.

However, in the case of a business all the operations of which are not carried out in Bangladesh, only such part of the income as is reasonably attributable to the operation carried out in Bangladesh shall be deemed to accrue or arise in Bangladesh.

3.8 Un-explained investments, income or expenditure

There are some unexplained cash credits, investments, expenditure including possession of money, bullion, jewellery, etc. with an assessee shall be deemed to be his income under the Income Tax Ordinance 1984. The deemed incomes have been specified in section 19 of the Ordinance.

- 1 **Unexplained cash credit [section 19(1)]:** Where any sum is found credited in the books of an assessee, maintained for any income year and the assessee offers no explanation about the nature and source thereof, or the explanation offered is not in the opinion of the Deputy Commissioner of Taxes, satisfactory, the sum so credited shall be deemed to be his income for that income year classifiable under the head "income from other sources".

- 2 **Difference between actual and recorded values of investments, money, bullion, jewellery or other valuable article [section 19(2)]:** Where, in any income year, the assessee has, made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Deputy Commissioner of Taxes finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income and the assessee offers no explanation about the excess amount or the explanation offered is not, in the opinion of the Deputy Commissioner Taxes, satisfactory, the excess amount shall be deemed to be the income of the assessee for such income year classifiable under the head "income from other sources".
- 3 **Unexplained expenditure [section 19(3)]:** Where, in any income year, the assessee has incurred any expenditure and he offers no explanation about the nature and source of the money for such expenditure, or the explanation offered is not in the opinion of the Deputy Commissioner of Taxes, satisfactory, the amount of the expenditure shall be deemed to be the income of the assessee for such income year classifiable under the head "income from other sources".
- 4 **Unrecorded investments [section 19(4)]:** Where, in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of fund for the investments; or the explanation offered is not; in the opinion of the Deputy Commissioner of Taxes, satisfactory, the value of the investments shall be deemed to be the income of the assessee for such financial year classifiable under the head "income from other sources".
- 5 **Unrecorded money, bullion, jewellery or other valuable article [section 19(5)]:** Where, in the financial year immediately preceding the assessment year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of fund for the acquisition of the money, bullion jewellery or other valuable article, or the explanation offered is not in the opinion of the Deputy Commissioner of Taxes satisfactory, jewellery or other valuable article, shall be deemed to be the income of the assessee for such financial year classifiable under the head "income from other sources".
- 6 **Income received from discontinued business: [section – 19(6)]** Income received during any income year from discontinued business is income of the said income year as income from business or profession.
- 7 **Dividend: [section 19(7)]** Any dividend declared or distributed by a company shall be deemed to be the income of the income year in which it is received and shall be included in the total income of the assessee of that year.
- 8 **Difference between fair market value and price paid against assets [section 19(8)]:** Where any assets, not being stock-in-trade or stocks, and shares, purchased by an assessee from any company and the Deputy Commissioner of Taxes has reason to believe that the price paid by the assessee is less than the fair market value thereof, the difference between the price so paid and the fair market value thereof, shall be deemed to be income of the assessee classifiable under the head "income from other sources".
- 9 **Salami or premia receipts [section 19(9)]:** Where any lump sum amount is received or receivable by an assessee during any income year on account of salami or premia receipts by virtue of any lease, such amount shall be deemed to be income of the assessee of the income year in which it is received and classifiable under the head "income from other sources". However, at the option of the assessee such amount may be allocated for the purpose of assessment proportionately to the years covered by the entire lease period, but such allocation shall in no case exceed five years.

10 Goodwill money, compensation or damages for cancellation or termination of contracts and licenses [section 19(10)]: Where any amount is received by an assessee during any income year by way of goodwill money or receipt in the nature of compensation or damages for cancellation or termination of contracts and licenses by the Government of any person, such amount shall be deemed to be the income of such assessee for that income year classifiable under the head "income from other sources".

11 Cancellation of indebtedness [section 19(11)]: Where any benefit or advantage, whether convertible into money or not, is derived by an assessee during any income year on account of cancellation of indebtedness, the money value of such advantage or benefit shall be deemed to be the income of such assessee for that income year classifiable under the head "income from other sources" with some exceptions.

12 Managing agency commission [section 19(12)]: Any managing agency commission including compensation received during any income year by an assessee for termination of agencies or any modification of the terms and conditions relating thereto shall be deemed to be his income for that income year classifiable under the head "income from other sources".

13 Winning from lotteries [section 19(13)]: Any amount is received by an assessee during any income year by way of winnings from lotteries, crossword puzzles, card games and other games of any sort or from gambling or betting in any form or of any nature whatsoever shall be deemed to be his income for that income year classifiable under the head "income from other sources".

14 Profits and gains of mutual insurance association [section 19(14)]: Any profits and gains derived in any income year from any business of insurance carried on by a mutual insurance association computed in accordance with the provisions of paragraph 8 of the Fourth Schedule shall be deemed to be the income of such association for that income year.

15 Recovery from loss, bad debt, expenditure or trading liability [section 19(15)]: Where, for the purpose of computation of income of an assessee under section 28, any deduction has been made for any year in respect of any loss, bad debt, expenditure or trading liability incurred by the assessee, and-

(a) subsequently, during any income year, the assessee has received, except as provided in Section 19(15)(aa), whether in cash or in any other manner whatsoever, any amount in respect of such loss, bad debt or expenditure, the amount so received shall be deemed to be his income from business or profession during that income year;

(aa) such amount on account of any interest which was to have been paid to any commercial bank or the BDBL or on account of any share of profit which was to have been paid to any bank run on Islamic principles and which was allowed as a deduction in respect of such expenditure though such interest or share of profit was not paid by reason of the assessee having maintained his accounts on mercantile basis, with three years after expiry of the income year in which it was allowed, shall, to such extent as it remains unpaid, be deemed to be income of the assessee from business or profession during the income year immediately following the expiry of the said three years. However, where any interest or share of profit is paid in a subsequent year, the amount so paid shall be deducted in computing the income in respect of that year

(b) the assessee has derived, during any income year, some benefit in respect such trading liability, the value of such benefit, if it has not already been treated as income under section 19(15)(c), shall be deemed to be his income from business or profession during that income year.

(c) such trading liability or portion thereof has not been paid within three years after expiration of the income year in which deduction was made in respect of the liability, such liability or portion, as the case may be, shall be deemed to be the income of the assessee from business or profession during the income year immediately following the expiry of the said three years.

However, where the trading liability is paid in a subsequent year, the amount so paid shall be deducted in computing the income in respect of that year.

Illustration

Suppose an assessee has debited the Profit & Loss Account by crediting trading liability for goods and services received during the assessment year 2014-15 and such expenses claimed was allowed in assessment for that year, if such trading liability was not paid within next 3 years (Assessment years 2015-16 to 2017-18), that trading liability will be added back as income for the assessment year 2018-19 only and not in any other year.

- 16 Profit from sale of fixed assets of business or profession [section 19(16)]:** Where any building, machinery or plant having been used by an assessee for purpose of any business or profession carried on by him is disposed of during any income year and the sale proceeds thereof exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be the income of the assessee for that income year classifiable under the head "income from business or profession".

Illustrations

- (a) Cost of an asset –Tk. 100,000. Written down value in the year of sale- Tk. 60,000. Sale price of the asset – Tk. 100,000. Revenue gain on sale of fixed asset will be Tk. 40,000 (100,000 - 60,000).
- (b) Cost of an asset –Tk. 100,000. Written down value in the year of sale Tk. 60,000. Sale price of the asset –Tk. 120,000. In this case, revenue gain on sale of fixed asset will be Tk. 40,000 and capital gains u/s 31 will be Tk. 20,000.

It is apparent that revenue gain on sale of fixed asset (balancing charge) under no circumstances shall exceed the difference between cost of the asset and written down value of the asset. In other words, tax department takes by way of revenue what it has allowed as depreciation allowance in the past. It may be noted that no depreciation allowance is allowable in the year when the asset is sold as per 3rd schedule.

- (c) ABC Bank Ltd. purchased a machine in the year 2013 at Tk. 5,000,000 and sold the same in November 2017 at Tk. 3,500,000. The written down value is Tk. 3,000,000. The year end of the company is December.

Calculate the business profit or loss and also the capital gain or loss, if any, for the relevant assessment year.

Solution

	Assessment year (2018-19)
Sale of machine	=Tk. 3,500,000
Less: Written down value (WDV)	<u>3,000,000</u>
Profit on sale (balancing charge)	<u>500,000</u>

It is assumed that written down value of Tk. 3,000,000 was worked out as per 3rd schedule. Profit on sale is within the difference between the original cost and written down value of the capital asset sold.

- 17 Profit from sale of agricultural assets [section 19(17)]:** Where any machinery or plant exclusively used by an assessee for agricultural purposes has been disposed of in any income year and the sale proceeds thereof exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and 5income year classifiable under the head "agricultural income"

- 18 Profit out of insurance, salvage or compensation money from fixed assets of business or profession [section 19(18)]:** Where any insurance, salvage or compensation moneys are received in any income year in respect of any building, machinery or plant having been used by an assessee for purpose of any business or profession is discarded demolished or destroyed and the amount of such moneys exceeds the written down value of such building, machinery or plant so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be the income of the assessee for that income year classifiable under the head "income from business or profession".

Example

Tk.

WDV of machine discarded	20,000
Original cost of the machine	80,000
Insurance money received	30,000

Here the difference between insurance money and the WDV is Tk. 10,000 which would be treated as business income. If salvage or insurance money received were Tk. 100,000, entire depreciation allowed earlier i.e. $(80,000 - 20,000) = \text{Tk. } 60,000$ would be treated as business income and the difference between insurance or salvage value and original cost, would be capital gain i.e. $(100,000 - 80,000) = \text{Tk. } 20,000$.

- 19 Profit out of insurance, salvage or compensation money from agricultural assets [section 19(19)]:** Where any insurance, salvage or compensation moneys are received in any income year in respect of any building, machinery or plant which having been used by the assessee exclusively for agriculture purpose is discarded, demolished or destroyed and the amount of such moneys exceeds the written down value of such machinery or plant so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be the income of the assessee for that income year classifiable under the head "agricultural income".
- 20 Profit on sale of capital items of scientific research [section 19(20)]:** Where an asset representing expenditure of a capital nature of scientific research within the meaning of section 29(1)(xx) is disposed of during any income year, so much of the sale proceeds as does not exceed the amount of the expenditure allowed under the said clause shall be deemed to be the income of the assessee for that income year classifiable under the head "income from business or profession".
- 21 Loan receipt otherwise than by cross cheque [section 19(21)]:** Where any sum claimed or shown to have been received as loan or gift by an assessee otherwise than by a bank transfer, the amount so received shall be deemed to be the income of the assessee for the income year in which such loan or gift was received and shall be classifiable under the head "income from other sources".
- However, where the loan referred to in section 19(21) is paid back in a subsequent income year, the amount so paid shall be deducted in computing the income in respect of that subsequent year. A loan shall not be deemed to be an income if the loan is taken from a banking company or a financial institution. A loan or gift received by an assessee being an individual shall not be deemed to be the income if the aggregate amount of such loan or gift received in an income year does not exceed Tk.5,00,000/ or the loan or gift received from spouse or parents of the assessee and a banking channel is involved in the process of such loan or gift.
- 22 House rent security deposit [section 19(22)]:** Where an assessee, being the owner of a house property, receives from any person to whom such house property or any part thereof is let out any amount which is not adjustable against the rent payable, the amount so received shall be deemed to be income of the assessee for the income year in which it is received and be classifiable under the head "income from house property".

However, where such or part thereof is refunded by the assessee in a subsequent income year the amount so refunded shall be deducted in computing the income of the assessee in respect of that income year.

- 23 Export quota [section 19(23)]:** Where during any income year an assessee, being an exporter of garments, transfers to any person, the export quota or any part thereof allowed to him by the Government, such portion of the export value of the garments exportable against the quota so transferred as may be prescribed for this purpose shall be deemed to be income of the assessee for that income year, classifiable under the head "income from business or profession". For the purposes of section 19(23) of the Ordinance, an amount equal to 3% of the export value of the garments exportable against the export quota transferred by an assessee shall be deemed to be his income for the income year during which the transfer took place[Rule 30A].

Example

Aklima Garments LTD. transferred its export quota of certain items to Taslima Garments LTD. in the year 2017-18. The export value of the quota transferred has been Tk. 10 million and for this transfer Aklima charged Tk. 4 million to Taslima.

As per Rule 30A the value of the transfer is $3\% \times 10 \text{ million} = .3 \text{ million}$. Therefore, Tk. 3,00,000 would be Aklima's income for income year 2017-18. But it has realized Tk. 40,00,000. The balance Tk. 37,00,000 may not be taxed. However, it is certain that the company will be taxed on full deemed value even when money received on the transfer falls short of it.

There is a tax rebate of 50% on the export of garments by companies registered in Bangladesh but Aklima cannot claim the rebate for the value received on the transfer of quota since it has not exported. Therefore, the amount will be taxed at full rate.

- 24 Equity received from shareholders in cash [section 19(24)]:** Where a company not listed with any stock exchange, receives paid up capital from its shareholders during any an income year, the amount so received as paid up capital, not being received by crossed cheque or bank transfer, shall be deemed to be the income of such assessee for that income year classifiable under the head "income from other sources".
- 25 Buying/hiring motor car/jeep by a company [section 19(27)]:** Where an assessee, being a company, purchases directly or on hire one or more motor car or jeep and value of any motor car or jeep exceeds 10% of its paid up capital together with reserve and accumulated profit, then 50% of the amount that exceeds such 10% of the paid up capital together with reserve and accumulated profit shall be deemed to be the income of such assessee for that income year classifiable under the head "income from other sources".
- 26 Building construction material if purchased on credit but not paid back within 2 years [section 19(29)]:**

Where an assessee, other than real estate company, purchases on credit any building construction material, the sum or any part thereof which has not been paid back within 2 years from the end of the income year shall be classifiable under the head "income from other sources".

- 27 Unspent amount of repairs and maintenance in case of computing house property income [section 19(30)]:**

Where an assessee, having house property income, got statutory deduction of repairs and maintenance from annual value but not really spent or less spent then the unspent amount will be treated as income classifiable under the head "income from house property".

28 Showing tax free income or income where reduced tax rate is applicable at return u/s 93 or at revised return u/s 78 [section 19(31)]:

Where an assessee, files a revised return or amended return u/s 78, 82BB or 93 and shows in such revised return or amended return any income that is subject to tax exemption or a reduced tax rate, so much of such income as exceeds the amount shown in the original return shall be deemed to be the income classifiable under the head "income from other sources".

3.9 Special tax treatment in respect of some investments:

(i) In respect of investment in residential building/apartment—sec.19BBBBB

Any sum invested by a person in purchase or construction of building or apartment will be deemed to have been explained if he pays tax at the prescribed rate per square meter before the completion of assessment.

(ii) Voluntary disclosure of income. – Section 19E

(1) Notwithstanding anything contained in IT Ordinance, 1984 any person-

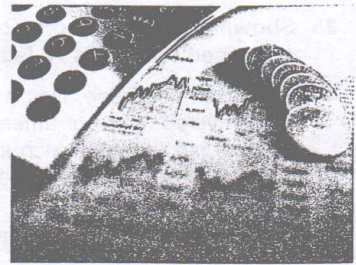
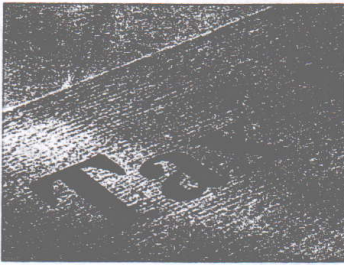
- (a) who has not been assessed to tax for previous assessment year or years and he has not submitted return of income for those year or years may disclose such income in the respective heads of income in the return of income along with the income for the current assessment year; or
- (b) who has been assessed to tax for previous assessment year or years any income has escaped assessment in those assessments or the amount of income assessed is less than the actual income, may disclose that income for respective heads of income in the return of income along with the income for the current assessment year.

(2) Return of income mentioned in sub-section (1) shall be treated as valid, if-

- (a) the assessee pays before the submission of return tax payable at applicable rate on total income including such income under respective heads of income and penalty@10% of tax proportionate to such income under respective head;
- (b) the return of income is submitted within the time specified in section 75 (2);
- (c) a declaration is enclosed with the return of income in respect of name of the person declaring such income, head of the declared income and amount of tax and penalty paid thereof.

(3) The provision of this section shall not apply, where-

- (a) A notice u/s 93 has been issued before submission of such return of income for the reason that any income, assets or expenditure has been concealed or any income or a part thereof has escaped assessment.
- (b) A notice to a bank has been issued under clause (f) of section 113
- (c) Any proceeding under sections 164, 165 or 166 has been initiated
- (d) Any income declared under this section which is not derived from any legitimate source of income or derived from any criminal activities under any other law for the time being in force.
- (e) Any income declared under this section which is tax free or reduced tax is applicable.
- (4) The income shown under this section may be invested in any income generating activities or any sector including the following:
 - (a) industrial undertaking including its expansion;
 - (b) balancing , modernization, renovation and extension of an existing industry;
 - (c) building or apartment or land;
 - (d) securities listed with a stock exchange in Bangladesh; or
 - (e) any trade, commercial, or industrial venture engaged in production of goods or services.



Chapter 4

Income from salary

Contents

Introduction

Examination context

Topic list

4.1	Heads of income
4.2	Income from salary
4.3	Provident fund
4.4	Non-assessable income under the head "salary"
4.5	Tax rebate on allowable investment
4.6	Salient points of salary assessment
4.7	Examples

Introduction

Learning objectives

- Identify the different heads of income.
- Computation of income from 'salary'.
- Definition of perquisites, allowances and benefits under salary income.
- Identify the allowable deduction under different components of salaries.
- Identify the non-assessable income under the head 'salary'
- Concept of provident fund and other funds related to salary.
- Understanding investment allowance and computing tax rebate on that.
- Computing tax liability of salaried person.

Practical significance

Income from salary is very important for many reasons. This is a common head of income for most of the individual tax payers. It can even be said that individual taxation depends on this head of income. Government collects a significant portion of tax under this head. Thus, tax law covering income from salary is very rich and scope of learning is also wide. This chapter carries significance for corporate practitioners also in the sense that this expense in certain conditions cannot be shown as expense. The application of perquisites and its impact on computing company tax is also very important. Income from salary is the first head of income out of 7 heads of income. Out of the 7 heads, this is a very common head of income. Again, this head encompasses different technical and conceptual issues like perquisites, provident fund and other funds where clear understanding is very important as a tax practitioner and tax professional.

Computing taxable income under the head income from salary, computing investment allowance and testing the amount for maximum limit, computing tax rebate on investment allowance, understanding the tax credit on tax deducted at sources and finally computing net tax liability of an individuals are some notable points that is covered in this chapter and thus this chapter becomes very significant for the C.A. students. This chapter lays the foundation of the following chapters also.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'income from salary' is one of the basic requirements for determining tax liability? Can you calculate the taxable income from salary? Do you understand the application of investment allowance in computing final tax liability?

Working context

In practice, as the accountants are sometimes required to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

As individual assessee is abundant and most of the individual assessee has income under the head, understanding this chapter is very useful in practical life.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the different heads of income.
- Define the concept of salaries.
- Recognize the perquisites, allowances and benefits under salary income.
- Recognize the income assessable under the head.
- Illustrate the exemptions allowed in determining taxable income under the head.
- Understand investment allowance and tax rebate on that.
- Compute final tax liability on salary income.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of taxable income.

INCOME FROM SALARY

Section overview

- ➔ There are seven heads of income.
- ➔ Total income and taxable income may not be the same.
- ➔ Tax free ceiling of allowances.
- ➔ Computation of total income from salary.
- ➔ The perquisites and allowances need to be considered in determining salary income.
- ➔ Treatment of provident fund and other funds.
- ➔ Scope of investment allowance and tax rebate on that.
- ➔ Computing tax liability.

4.0 Heads of income: section 20

All incomes shall, for the purpose of charge of income tax and computation of total income, be classified and computed under the following heads of income, namely:

- (a) Salaries.
- (b) Interest on securities.
- (c) Income from house property.
- (d) Agricultural income.
- (e) Income from business or profession.
- (f) Capital gains.
- (g) Income from other sources.

4.1 Income from salaries

(i) Concept of salaries: section 2(58)

There is no exhaustive definition of "salary" in the Ordinance. An inclusive definition has, however, been given in section 2(58) of the Income Tax Ordinance, 1984 as follows: - 'salary' includes-

- (a) any pay and wages;
- (b) any annuity, pension or gratuity;
- (c) any fees, commissions, allowances, perquisites or profits in lieu of, or in addition to, salary or wages;
- (d) any advance of salary;
- (e) any leave encashment.

According to section 21(1), the following income of an assessee is classified and computed under the head "salaries", and thereby chargeable to tax, namely-

- (a) any salary due from an employer to the assessee in the income year, whether paid or not;
- (b) any salary paid or allowed to him in the income year by or on behalf of an employer, though not due or before it became due to him; and
- (c) any arrear salary paid or allowed to him in the income year by or on behalf of an employer, if not charged to income tax for any earlier income year.

Salary once included in any year on due basis or advance payment basis is not includible in the income of any other year. It is not logical to pay taxes on same income in multiple years.

(ii) Perquisites

Perquisite has been defined in the Oxford dictionary as any casual emolument, fee or profit attached to an office or position, any addition to salary and wages. However, as per section 2(45) of IT Ordinance 1984, "perquisite" means -

- Any payment made to an employee by an employer in the form of cash or in any other form excluding basis salary, festival bonus, incentive bonus, arrear salary, advance salary, leave encashment or leave fare assistance and overtime, and
- Any benefit, whether convertible into money or not, provided to an employee by an employer, called by whatever name, other than contribution to a recognized provident fund, approved pension fund, approved gratuity fund and approved superannuation fund.

From the above definitions, it can be deduced that perquisite includes –

- a. the value of rent free accommodation;
- b. the value of any concession in the matter of rent respecting any accommodation;
- c. any sum payable by the employer, whether directly or indirectly, as insurance premium for the assessee or his spouse or any of his dependent child.
- d. the value of any benefit provided free of cost or at a concessionary rate, and
- e. the sum paid by an employer in respect of any obligation of an employee.

Thus the phrase 'perquisite' signifies some additional benefit in addition to the amount that may be legally due by way of contract for service rendered.

(iii) Valuation of perquisites, allowances and benefits includible as income in the cases of salaried persons: Rule 33

(1) Extent of perquisites, allowances and benefits includible as income under the head "salary" has been prescribed in rules 33A to 33J of the Income Tax Rules, 1984.

(2) For the purpose of determination of value of perquisites, allowances and benefits,-

- (a) "Basic salary" means the pay and allowances payable monthly or otherwise but does not include:
 - (i) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned.
 - (ii) employer's contribution to a recognized provident fund or fund to which the Provident Fund Act, 1925 applies and the interest of an employee in such fund.
 - (iii) allowances which are exempt from the payment of tax; and
 - (iv) allowances, perquisites, annuities and benefits as referred to in rule-33(1).

- (b) "Employee", in relation to a company, includes the managing director, or any other director or other person, who irrespective of his designation, performs, any duties or functions in connection with the management of the affairs of the company

House rent allowance receivable in cash: Rule 33A

Where the house rent allowance is receivable by the employee in cash, the amount, if any, by which the house rent allowance so receivable exceeds 50% of the basic salary or Tk.25,000 per month, whichever is less, shall be included in his income.

Illustration

Mr. X is paid a monthly basic salary of Tk. 50,000 and house rent allowance of Tk. 30,000. His taxable portion of house rent allowance will be computed as:

House rent allowance

Actual (Tk. 30,000 × 12 months)	3,60,000
Exemption:	
50% of Basic (Tk. 50,000 × 12 months × 50%)	3,00,000
Or, Tk. 25,000 × 12 months	3,00,000
Whichever is lower	3,00,000
Amount to be treated as taxable income	60,000

Rent free accommodation: Rule 33B

- (1) Where the employee is provided with rent free accommodation, the rental value of the accommodation or 25% of the basic salary of the employee, whichever is less, shall be included in his income.
- (2) Where the accommodation is provided to the employee at a concessional rate, the difference between the rent actually paid by him and the amount determined to be includible in an employee's salary under rule 33B(1) shall be added to his income.

Illustration 1

Mr. X is paid a monthly basic salary of Tk. 40,000 and a dearness allowance of Tk. 3,000 per month. He has also been provided with a rent free accommodation which his employer can be rented for a monthly rent of Tk. 20,000. How much of the house rent will be added with his taxable income as deemed income?

Includible amount of accommodation facility with taxable income

25% of Basic (Tk. 40,000 × 12 months × 25%)	1,20,000
Or, Rental value (Tk. 20,000 × 12 months)	2,40,000
Whichever is lower	1,20,000

(Note: dearness allowance by definition is not a part of basic salary)

When the accommodation is given by the employer at a concessional rate the difference between the token rent actually paid by him and lower of 25% of basic salary and rental value shall be added with salary.

Illustration 2

To fit the situation, let us change the earlier problem slightly. Mr. X has been paid a monthly basic salary of Tk. 40,000. Besides he has been provided with accommodation at a concessional monthly rate of Tk. 10,000. Actual monthly rent of the accommodation is Tk. 20,000. How much will be added with taxable income due to availing this opportunity from the employer?

Includible amount of accommodation facility with taxable income

25% of Basic (Tk. 40,000 × 12 months × 25%)

Or, Rental value (Tk. 20,000 × 12 months)

Whichever is lower

Concessional rent paid (Tk. 10,000 × 12 months)

Amount to be added with taxable income

1,20,000	
2,40,000	
	1,20,000
	1,20,000
	0

Cash conveyance allowance with no transport facility: Rule 33C

Where no transport is provided by the employer and the conveyance allowance is receivable by the employee in cash, the allowance so receivable in excess of Tk. 30,000 annually shall be included in his income.

Illustration 3

Mr. X is an officer in a private bank in Dhaka. He has his own car and is paid Tk. 40,000 annually in cash as conveyance allowance. How much of this allowance will be added with taxable salary income?

Includible amount of conveyance allowance with taxable income

Actual allowance

Exemption: up to

Taxable income

40,000
30,000

10,000

Nothing would be added if he received less than Tk. 30,000 annually.

(Note: The car is his own and not provided by his bank.)

Car facility provided partly/exclusively for personal use: Rule 33D

Where the car facility is provided by the employer for the use of the employee partly or exclusively for personal or private purpose, there shall be included in the employee's income, an amount equal to 5% of the employee's basic salary or Tk.60,000 per year whichever is higher.

Illustration 4

Basic salary of Mr. X is Tk. 50,000 per month. He has also been provided with a car by his employer. He uses the car approximately 80% for personal uses and 20% for office use. 5% of basic salary i.e. Tk.30,000 or Tk.60,000 whichever is higher (here Tk.60,000 is higher) would be added with salary as notional income and will be taxed at regular rate.

Additional conveyance allowance: Rule 33E

Where a cash allowance is receivable by an employee in addition to the perquisite mentioned in rule 33D, the whole amount of such allowance plus the amount determined under rule 33D shall be included in his income.

Illustration 5

Mr. X receives Tk. 3,000 monthly as conveyance allowance. He also enjoys a full time official car for both his personal and office purpose. His basic salary is Tk. 48,000 per month. What will be the impact for these benefits in cash and kind in computing taxable income of Mr. X?

Includible amount of conveyance allowance and facility with taxable income

Actual allowance (Tk. 3,000 × 12 months)	36,000	
5% of Basic (Tk. 48,000 × 12 months × 5%) or Tk. 60,000 whichever is higher	60,000	
Taxable income		96,000

Free or concessional passage for travel abroad/within Bangladesh: Rule 33G

(1) Where free or concessional passage for travel abroad or within Bangladesh is provided by the employer to an employee (including the members of his house-hold and dependents), there shall be included in his income of the employee-

- (i) Where the passage is provided in accordance with the terms of employment, an amount equal to the sum by which the cash payments, if any made by the employer exceeds the actual expenditure incurred by the employee; and
- (ii) Where the passage is not in accordance with the terms of employment, the whole of the amount paid in cash, if any, or if no cash payment is made, the amount which would have been expended by the employee had the free or concessional passage, as the case may be, not been provided by the employer;

Where free concessional passage for travel abroad is availed by the employee more than once in two years, the whole of amount paid to him in cash, if any, for such additional passage or if no cash payment is made, the amount which would have been expended by him had the additional passage not been provided by the employer, shall be included in his income.

(2) Where the transport is provided free of cost or at a concessional rate by an undertaking engaged in the transport of passengers or the carriage of goods to any employee of the undertaking (including the members of his household and dependents) in any conveyance owned or chartered by the undertaking for the purpose of the transport of the passengers or carriage of goods, nothing shall be added in his income.

Illustration 6

Mr. X is an employee of GMG Airlines traveled to Bangkok recently along with his wife and dependent children. As a term of the service contract all return tickets were provided by the employer. Besides this his employer also has given Tk. 2,00,000 to meet the expenditure abroad which also is a part of the service contract. The value of the return tickets were Tk. 90,000. He has spent Tk. 1,50,000 on the trip. Here, himself, his spouse, children are all qualified to get the privilege under the service contract. He has been given the return tickets free so nothing is to be added with salary but cash amount of Tk. 2,00,000 would be fully included with the salary income since the above rule provides for passage or passage money and not for other travel expenditure.

Illustration 7

Mr. X, an employee of a multinational company in Dhaka, has been given Tk. 1,00,000 as a travel passage to U.K. with his spouse as per terms of employment. On the return tickets he saved Tk. 25,000 by flying the cheapest airlines available in the sector.

Excess of cash over the actual passage i.e. Tk. 25,000 would be added with his salary income.

Illustration 8

Mr. X has been given 50% passage assistance to USA amounting to Tk. 40,000 which however, was paid by his employer not as a term of his contract but out of satisfaction on his performance.

Since the concessional passage has not been a part of service contract the full amount would be added with salary.

Entertainment allowance: Rule 33H

Entertainment allowance is fully taxable.

Free tea, coffee, beverages: Rule 33H

No addition on this account shall, however, be made if free tea, coffee, beverages or the like thereof are provided at the office premises during the course of work.

Medical allowance: Rule 33I

Where any amount is payable to the employee by way of hospitalization or medical expenses/allowance, the amount, if any, by which the sum receivable by him exceeds 10% of his basic salary or Tk.1,20,000 per year whichever is lower shall be included in his salary income.

However the limit will be Tk.10,00,000/ in case of disabled employee. Nothing will be added with salary income if the cost of surgery against heart, liver, kidney, eye and cancer are borne by the employer.

Illustration 9

Mr. X receives Tk.13,000 per month as medical allowance. His basic salary is Tk.1,00,000 per month. 10% of his basic salary comes at Tk. 1,20,000 or Tk.1,20,000 whichever is lower is exempted. So Tk.1,20,000 will be exempted as it is lower and the rest Tk.36,000 (Tk. 1,56,000 – Tk. 1,20,000) will be included in salary income.

Other benefits: Rule 33J

Where any benefit or annuity not covered by the provisions of rule 33A to rule 33I is provided to the employee, the members of his household or his dependents, there shall be included in his income an amount equal to the amount which would have been expended by the employee in obtaining such benefit or annuity from an independent source in the same or near locality, had it not been so provided, as reduced by the amount, if any, expended wholly, necessarily and exclusively in the performance of the duties of the office held by him or actually paid by him in cash.

Under clause (b) of rule 33(2) a shareholder director of company is to be treated as an employee and hence to be entitled to the above allowances. But these benefits can be claimed from salary income of one company only.

Illustration 9

Mr. X, a director of a multinational in Dhaka, had to attend a regional management conference arranged by the group in Singapore and has been paid Tk. 2,00,000 by the company to meet his weeklong expenses in Singapore. He actually spent Tk. 1,70,000.

Here, the benefit of Tk. 2,00,000 has been given to Mr. X wholly, necessarily and exclusively in the performance of his duty as a company director, out of which he spent Tk. 1,70,000. Therefore, under this sub-rule, balance Tk. 30,000 unspent would be added with salary.

Test to determine perquisites

Particulars	Salary	Perquisites	None
Basic salary	✓		
Dearness allowance	✓		
Festival bonus	✓		
Performance bonus	✓		
Leave encashment	✓		
Employer's contribution to RPF	✓		
Interest on RPF within the prescribed limit			✓
Gratuity credited up to Tk.2.5 crore			✓
Special allowance to meet official duties			✓
Commission	✓		
Insurance premium borne by the employer		✓	
Incentive bonus	✓		
House rent allowance-cash		✓	
Free accommodation		✓	
Entertainment allowance		✓	
Conveyance allowance –cash		✓	
Car provided by the employer for personal use		✓	
Availing free pick & drop facility			✓
Leave passage			✓
Entertainment allowance		✓	
Medical-cash allowance		✓	
Any other allowance		✓	
Any other obligation of the employee (House, servant, mali etc. borne by the employer)		✓	

Basic principles

Anything paid in cash as fixed sum, forms part of the salary and any obligation of the employee borne by the employer is perquisite.

Illustration 10:

From the following particulars of 5 employees of a company calculate the perquisites not admissible (excess perquisites) as business expenditure U/S 30(e).

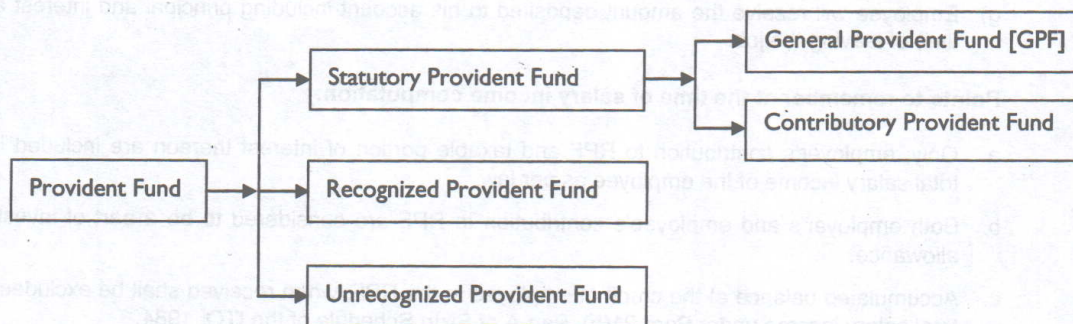
	Employee	A	D	C	D	E
1	Basic salary	360,000	320,000	310,000	280,000	270,000
2	Festival bonus	180,000	160,000	150,000	140,000	130,000
3	House rent allowance	-	200,000	200,000	180,000	-
4	Conveyance allowance	120,000	100,000	100,000	100,000	100,000
5	Contribution to RPF	36,000	32,000	31,000	28,000	27,000
6	Entertainment allowance	123,000	36,000	36,000	- 36,000	105,000
7	Free accommodation	240,000	-	-	-	300,000
8	Telephone bill reimbursement	12,650	9,800	10,800	-	-
9	Utilities	66,000	60,000	60,000	65,000	69,000
10	Total income (Total of 1 to 9)	1137,650	917,800	897,800	829,000	901,000
A	Salary (1+2+3+5)	576,000	712,000	691,000	628,000	427,000
B	Perquisites (4+6+7+8+9)	486,650	205,800	206,800	201,000	499,000
C	Perquisites allowable	550,000	550,000	550,000	550,000	550,000
D	Excess perquisites (B-C)	11,650	-	-	-	24,000

Notes:

- (i) In computing total taxable income of any company excess perquisites would be added u/s 30(e).
- (ii) The basic principle is whatever paid in cash and in the form of monthly benefit is salary and should not constitute perquisites.
- (iii) U/S 30(e) perquisites are allowable up to Tk. 5,50,000 per employee per year.

4.3 Provident Fund:

Provident fund is the fund where funds are accumulated during the active period of employees for his financial protection at the end of his service life, amount contributed by the employee or the employer or both employee and employer. The amount lying in the fund is invested in trust securities that yield fair but secured returns. When an employee leaves his service either on retirement or for any other reason, he gets back the money standing to the credit of his provident fund account. In case of death of the employee, the amount is refunded to his nominee. Provident fund is a social security measure provided to employees for his rainy days of post-employment period. There are three types of provident fund:



General Provident Fund [GPF]:

General provident fund is controlled and maintained by the government for the government employees. Such fund is constituted and run by the government under Provident Fund Act 1925, General Provident Fund Rules 1979 and Contributory Provident Fund Rules 1979. Government employees who are permanently transferred to the pensionable jobs, they contribute to general provident fund where government as an employer contributes nothing. On the other hand, government employees who have no benefits from pension, they contribute to contributory provident fund where both government bodies and the employee contribute. Generally most of the government employees of our country are pensionable.

Points to remember at the time of tax computation:

- a. Since employer does not contribute to general provident fund there is no question of its inclusion with salary. But where government bodies contribute to contributory provident fund, government's contribution will be included with salary.
- b. Employee's contribution to statutory / general (government) provident fund will be considered as investment allowance.
- c. Accumulated balance of GPF at the credit of employees when received will not be included in his total income. It is excluded from total income under Para 21(a), Part A of Sixth Schedule of the ITO, 1984.

Recognized Provident Fund [GPF]:

Recognized Provident fund is constituted under the conditions mentioned in Part B of First schedule in the Income Tax Ordinance, 1984 and approved by the Commissioner of Taxes. These funds are available in non-government organizations where both employees and employer contribute the same amount. In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the NBR may prescribe:

- a) All the employees shall be employed in Bangladesh or shall be employed by an employer whose principal place of business or head office is in Bangladesh. In case of exceptional situation the recognition criteria will depend on the Commissioner's judgment.
- b) Employer must deduct a certain percentage from the salary of employee and deposit the same to the fund.
- c) Employer will also contribute the same amount as deducted from the employee.
- d) The fund will constitute taking the contribution of both the employer and employee.
- e) The fund will be managed by trustee of two or more persons.
- f) Employer will not be entitled to take any amount from the fund.
- g) Employee will receive the amount deposited to his account including principal and interest at the time of leaving the job.

Points to remember at the time of salary income computation:

- a. Only, employer's contribution to RPF and taxable portion of interest thereon are included in the total salary income of the employee as per law.
- b. Both employer's and employee's contribution to RPF are considered to be a part of investment allowance.
- c. Accumulated balance at the credit of employee in the RPF, when received shall be excluded from total salary income under Para 21(b), Part A of Sixth Schedule of the ITO, 1984.

Unrecognized Provident Fund:

Unrecognized provident fund is not the recognized or statutory fund. This fund is not constituted under Part B, First schedule in the Income Tax Ordinance, 1984 or under any other applicable acts or laws and is not approved by the Commissioner of Taxes. In this fund, both the employees and employer contributes and generally it is found in non-government organization. In this case, the employers' contribution and interest thereon is not included in the total income of the employee. At the time of the employee's retirement, the accumulated balance of the UPF except employees' contribution is included in the total income.

Points to remember at the time of tax computation:

- a. Employer as well as employee may contribute to this provident fund, but employer's contribution will not be added in computing taxable salary income.
- b. At the time of employee's retirement, the accumulated balance of this fund minus the employee's contribution plus interest thereon is taxable and will be added with salary.

Approved Superannuation Fund:

This type of fund is created for granting pension and other benefit to the employees on their retirement, or after a specified age or his death. This fund is run by the individual name of the employees. This fund is approved and run under the provisions of Part A, First Schedule of the ITO,

1984. Both employee and employer contribute to the fund. The contribution of the employer is added to the income of the employee. But interest on this fund and any amount received from it is not added to income.

Approved Gratuity Fund:

If the employer agrees to constitute a gratuity fund for the benefit of the employees on the job contract, then the employer contributes to the gratuity fund for the benefit of the employees in the event of retirement. The approved gratuity fund is approved by the NBR and run under the conditions mentioned in at First Schedule, Part C. Employee contributes nothing in this fund. The contribution by the employer is considered as income of employee. But interest on this fund and amount received up to Tk.2.5 crore from it is not added to income.

Worker's Profit Participation Fund:

It is established under the Bangladesh Labour Act, 2006 (Act. XXXXII of 2006). Any payment not exceeding Tk.50,000/ received by any worker from this fund, shall be excluded from the total income as provided under Para 21(d), Part A of Sixth Schedule to the Income Tax Ordinance, 1984.

4.4 Non-assessable income under the head "salaries":

In Part A of Sixth Schedule of the ITO, 1984, some income relating to salary have been mentioned as non-assessable:

a) All employees, mainly for all Bangladeshi residents:

- i) Any income from a provident fund established under the Provident Fund Act, 1925 and in case of worker any income from WPPF. (Para 4)
- ii) Any special allowance, benefits or perquisite specifically granted to meet some official expenses. (Para 5)
- iii) Pension (Para 8)
- iv) Gratuity up to Tk.2.5 crore (Para 20)
- v) Any receipt from Government and recognized provident fund, approved superannuation fund and in case of worker/employee Tk.50,000 from WPPF. (Para 21)
- vi) Interest on recognized provident fund if it does not exceed $\frac{1}{3}^{\text{rd}}$ of salary (here salary means basic salary+ dearness allowance) and in so far it is allowed @ 14.5% per year. That means the lower one is tax free. (Para 25)
- vii) Any amount received by an employee of a government organization, a local authority, or an autonomous or semi-autonomous body at the time of his voluntary retirement. (Para 26).

b) For foreign employees:

- i) Any salary income received by any ambassador, high commissioner, envoy, minister, charge d'affairs, commissioner, counselor, secretary, advisor of an embassy or high commission. (Para 7)

4.5 Tax rebate on certain investment:

- (a) Under the provision of section 44 resident individuals are entitled to get tax rebate based on the following formula:

	Threshold level of eligible amount	% of rebate on eligible amount
1	First Tk.2,50,000	15%
2	Next Tk.5,00,000	12%
3	Remaining amount	10%

(b) The eligible amount will be the lower of the following:

- (i) Tk 1.50 crore ;
- (ii) 25% of total income [excluding exempted income, income on which reduced tax rate is applicable and any income u/s 82C] ;
- (iii) Actual investment.

(c) The item on which such investment allowance is admissible is given in Part B of Sixth Schedule of ITO, 1984.

4.6 Items included in investment allowance related to salary income:

From basic salary, the employer can deduct a certain amount of money under various heads according to the contract between employer and employee. Of those some of the deductions are included in the items of investment allowance for which tax rebate is admissible: As per the regulations of Part B of Sixth Schedule of the ITO, 1984, the following salary items are considered as a part of the investment allowance:

- i) Any sum deducted from salary to a deferred annuity or for making provisions for his wife or children, provided that the sum so deducted shall not exceed one-fifth of the salary. (Para 3)
- ii) Employee's contribution to a General Provident Fund [GPF]. (Para 4)
- iii) Employee's and Employer's contribution to RPF (Para 5)
- iv) Ordinary annual contribution to approved superannuation fund. (Para 6)
- v) Employee's contribution to a benevolent fund or group insurance scheme. (Para 17)

Computation of taxable income from salary at a glance:

Description	Amount that will be added with salary
1. Basic salary	Full
2. Dearness allowance	Full
3. Bonus	Full
4. Commission and fees	Full
5. Advance salary	Full
6. Arrear salary	Full, provided that, it was not taxed in earlier year
7. Leave encashment	Full
8. Pension	Nothing, since fully tax free
9. Gratuity	Amount exceeding Tk.2.5 crore
10. Annuity	Full
11. Profit in lieu of salary	Full
12. Profit in addition to salary	Full
13. Education allowance for children	Full
14. Employer's contribution to RPF	Full
15. Employer's contribution to employee's life insurance policy	Full
16. Entertainment allowance	Full
17. Medical allowance	10% of basic or Tk.1,20,000 whichever is lower is exempted. The rest amount will be added with income. However the limit for disabled employee is Tk.10,00,000 with some conditions.
18. Traveling allowance	Excess over actual expenditure.
19. Special allowance	Nothing, if given and spent for official purpose.
20. House rent allowance	Actual allowance less exemptions of Tk. 25,000 p. m. (annually Tk. 3,00,000) or 50% of basic salary whichever is less.

21.	Rent free accommodation	Rental value or 25% of basic whichever is less
22.	Accommodation at concessional rate	Rental value or 25% of basic whichever is less, minus deducted rent
23.	Conveyance allowance	Actual amount less exemption of Tk. 30,000 on an annual basis.
24.	Transport / conveyance facility	5% of basic salary or Tk.60,000 whichever is higher if full time car facility is given. Nothing will be added if it is given only for official purpose.
25.	Interest on RPF	Actual Interest less exempted to the extent of 1/3 rd of salary (here salary means basic and dearness allowance) or @ 14.5% whichever is less.
26.	Free tea, coffee or light beverage in office premises	Nothing
27.	Free dress, telephone, power, gas, water in office etc.	Full
28.	Servant allowance	Full
29.	Compensation	Full
30.	Allowance received as head of the department / Charge allowance.	Fully tax free if it spent for office purpose. [6 th schedule(part-A) para-5]
31.	Overtime	Full
32.	Residence telephone bills / utility bills / club bills reimbursed	Full

4.6 Salient points in assessment of income from salaries

- (a) Tax is payable by an assessee under the head "salaries" in respect of any salary or wages, any annuity, pension or gratuity and any fees, commission, perquisites or profits in lieu of, or in addition to, any salary or wages, and any advance salary.
- (b) Tax is levied on salaries which are due, whether paid or not, as well as on salaries which are paid, whether due or not.
- (c) Relationship of employer and employee must exist between the payer and the recipient of salaries. The employer may be Government, a local authority, a company or any other public body or association or any private employer.
- (d) Death-cum-retirement benefits or gratuities and certain payments from funds are completely exempt from tax.
- (e) Income chargeable under the head "salaries" is to be computed after making certain deductions.
- (f) The provisions regarding different types of provident funds and payment of life insurance premium are very important and are to be carefully studied to find out the correct income tax on income chargeable under the head "salaries".
- (g) Salaries are subject to deduction of tax at source. Hence, income tax is to be paid on Salaries for a particular assessment year at the rates applicable thereto.

Worked Examples and Solutions

Worked example 1

From the following data compute total income and tax payable by Mr. Amit Bhowmik for the income year ended 30 June 2018:-

Elements of salary		Tk.
Basic salary:	@ Tk 20,000 p.m.	2,40,000
Bonus:	2 months' Basic Pay	
Free furnished accommodation:		
Employer's contribution to RPF:	@ 10% of basic salary	
Car:	partly used for office and partly for personal purpose	
Life insurance premium paid by Mr. Amit Bhowmik		6,000

Solution 1:

Mr. Amit Bhowmik
Assessment year 2018-19
Income year ended on 30 June 2018

Computation of total income and tax liability

Income from "salaries" u/s 21:		Tk.
Basic salary @ Tk. 20,000 p.m. for 12 months		2,40,000
Free furnished accommodation – 25% of basic		60,000
Car @ 5% of basic salary or Tk.60,000 whichever is higher (note – 1)		60,000
Employer's contribution to RPF – 10% of Basic		24,000
Bonus – 2 months basic		40,000
Total income		4,24,000

Calculation of tax liability:

On first Tk. 2,50,000 @ 0%	0
On next Tk.1,74,000 @ 10%	17,400
Less: Tax rebate @ 15% of Tk. 54,000 (note 2)	8,100
Net tax payable	9,300

Note – 1: Conveyance used partly for personal and partly for office is not exempted rather added with salary to an amount that is equal to 5% of basic or Tk.60,000 whichever is higher and thus taxable.

Note – 2: Actual investments made:
 Contribution to RPF by both employee and employer Tk. 48,000
 Life insurance premium paid Tk. 6,000
 Total investment Tk. 54,000

Maximum limit [as per section 44(3)]:

25% of Tk. 4,24,000 (total taxable income) Tk. 1,06,000 or Tk. 1,50,00,000, or Tk.54,000 whichever is less=Tk.54,000. Thus, allowable investment allowance will be Tk. 54,000 on which 15% tax rebate is calculated.

Worked example 2

Mr. Milky, CEO of a Multinational company in Bangladesh, has got the following income for the income year ended 30 June 2018. You are required to calculate the total income and tax payable of Mr. Milky

- (a) Basic pay of Tk.150,000 per month sent directly to his bank account.
- (b) Rent free accommodation provided by the company.
- (c) Full time company car for his own use and for his family.
- (d) Company pays Tk. 100,000 p.m. for his three school going children which is paid to the school authority directly.
- (e) He received two festival bonus equivalents to basic pay during the festival time which he spent partly for his family and partly for the poor people in his village.
- (f) Driver's salary was Tk. 10,000 p.m. paid to his driver's bank account.
- (g) Company paid Tk. 300,000 to him during the year being the reimbursement of various utility bills of his house;
- (h) Medical allowance Tk. 5000 p.m. His actual expense is more than this.
- (i) He was paid Tk. 1,000,000 for his overseas travels for the official trip out of which he saved 25% during the year;
- (j) Bill paid for international club Tk. 295,000
- (k) He received interest on securities Tk. 175,000 on his investments;
- (l) He has got one house of his own at Baridhara and he received total Tk. 12,00,000 as rent from letting it out to a foreigner.
- (m) He paid Tk. 1,50,000 as LIP for himself
- (n) He invested Tk. 15,00,000 on Govt. bond and primary shares of listed companies;
- (o) Received cash dividend (net of TDS) Tk. 1,80,000 during the year.

Solution 2:

Mr. Milky
Assessment year 2018-19
Accounting year ended 30 June 2018
Computation of total income and tax liability

Income from "salaries" u/s 21:		Tk.
Basic salary @ Tk. 150,000 p.m.	Tk. 150,000 × 12	18,00,000
Free accommodation – 25% of basic	Tk. 18,00,000 × 25%	4,50,000
Car @ 5% of basic salary (note – 1)	Tk. 18,00,000 × 5%	90,000
Fee to school going children	Tk. 1,00,000 × 12	12,00,000
Festival bonus	Tk. 150,000 × 2	3,00,000
Reimbursement of utility bills		3,00,000
Savings from official overseas travel	Tk. 10,00,000 × 25%	2,50,000
Bills paid for international club		2,95,000
Taxable income from salaries		46,85,000
Income from "interest on securities" u/s 22-23		
Interest on securities		1,75,000
Income from "house property" u/s 24		
Annual value		12,00,000
Less: Allowable expenses -		
Repair and maintenance @ 25%		3,00,000
		9,00,000
Income from other source (u/s 33-34)		
Cash Dividend income	Tk. 1,80,000 × 100/90	2,00,000
	Less: exempted up to	25,000
		1,75,000
Total income		59,35,000

Income tax liability:	
On first Tk. 2,50,000 @ 0%	0
On next Tk. 4,00,000 @ 10%	40,000
On next Tk. 5,00,000 @ 15%	75,000
On next Tk. 6,00,000 @ 20%	1,20,000
On next Tk. 30,00,000 @ 25%	7,50,000
On balance Tk. 11,85,000 @ 30%	3,55,500
Gross tax on Tk. 59,35,000	13,40,500
Less: Investment tax rebate (note 2)	1,70,875
Tax liability after investment tax rebate	11,69,625
Less: Tax deducted at sources	
On dividend income	20,000
Net tax payable	11,49,625

Note – 1: Conveyance used partly for personal and partly for business is not exempted rather added with salary to an amount that is equal to 5% of basic or Tk.60,000 whichever is higher and thus taxable.

Note-2: Medical allowance is exempted up to 10% of basic 18,00,000@10%=1,80,000 or Tk. 1,20,000 whichever is lower. As he got only Tk. 60,000, so it is fully tax free.

Note – 3: Actual investments made:

Investment in Government Bonds and Primary Shares	Tk.	15,00,000
Life insurance premium		1,50,000
Total investment	Tk.	16,50,000

Maximum limit:

25% of Tk. 59,35,000= Tk. 14,83,750 or Tk. 1,50,00,000, or Tk.16,50,000 whichever is less= Tk. 14,83,750

Thus, allowable investment allowance will be calculated followingly:

On 1 st Tk.2,50,000 @ 15%.=.	Tk.37,500
On next Tk.5,00,000 @ 12%=	Tk.60,000
On balance Tk.7,33,750 @10%=	Tk.73,375
Total	Tk.1,70,875

Worked example 3

Mr. Mallik is a service holder. Following are the particulars of his income from salary for the year ended on 30th June 2018:

- Basic salary Tk. 25,000 per month.
- Dearness allowance - 10% of Basic salary
- Two festival bonus - each equal to one month's basic salary
- He has been provided with a rent-free quarter, the annual rental value of which is Tk. 50,000.
- He has been provided with a car for both office and private use.
- Medical allowance - Tk. 250 per month.
- During the year he received Tk. 6,000 as traveling allowance.
- He is given a servant allowance of Tk. 200 per month.
- He contributes 1% of his basic salary to the Group Insurance Scheme.
- He deposited Tk. 500 per month on a Deposit Pension Scheme.

Compute total income from salary and investment allowance.

Solution 3:

Assessee: Mr. Mallik
Assessment year 2018-2019
Income year ended 30 June 2018
Computation of total income and tax liability

Heads of income	Tk.	Tk.	Tk.
Income from salaries (section - 21):			
i) Basic salary (25,000x12)		3,00,000	
ii) Dearness allowance (3,00,000x10%)		30,000	
iii) Festival bonus (25,000x2)		50,000	
iv) Rent free accommodation: Rental value i.e. 50,000 or 25% of Basic salary i.e. 75,000 whichever is lower		50,000	
v) Conveyance facility (5% of Basic Salary or Tk.60,000 whichever is higher)		60,000	
vi) Medical allowance (250x12) Less: exempted fully as because it is within the limit of 10% of basic or Tk. 1,20,000 whichever is lower.	3,000 <u>3,000</u>		
vii) Traveling allowance Less: exempted fully assuming it was expended fully	6,000 <u>6,000</u>		
viii) Servant allowance (200x12)		2,400	
Total			4,92,400

Investment allowance: (actual)

Particulars	Amount (Tk.)
Employee's contribution to Group Insurance Scheme 1% of B.S. (3,00,000x1%)	3,000
Contribution to DPS (500x12)	6,000
Total	9,000

Worked example 4

On June 2018, Mr. Syful Hoque's basic salary falls on Tk. 10,200 in the scale of 9,600-200x12-12,000. His date of yearly increment is on 1st April. He received dearness allowance @ 10% of basic salary and medical allowance Tk. 300 per month. During the year his actual amount of medical expense was Tk. 3,000. He received two bonus equivalent to one month's basic salary-one received before the date of increment and another after increment.

He contributes 10% of his basic salary to a recognized provident fund from which he has also received an interest of Tk. 1,500 @ 14%. His employer also contributes the same amount to the RPF. He has been provided with a rent-free quarter and a car for both official and personal purpose. During the year he has also received an entertainment allowance of Tk. 5,000 of which Tk. 4,500 has actually been spent. His investments during the year were as follows:

- Purchase of shares of a listed company Tk. 2,000.
- Purchase of gold Tk. 10,000.
- Payment of his life insurance premium Tk. 4,000 (Policy value Tk. 35,000)
- Purchase of books and magazine Tk. 3,000.
- Contribution to a Deposit Pension Scheme Tk. 500 on a monthly basis.

Compute total income and tax liability of Mr. Syful Hoque for the assessment year 2018-19.

Solution 4:

Assessee: Mr. Syful Hoque
Assessment year 2018-19
Accounting year ended 30 June 2018
Computation of total income and tax liability

Heads of Income	Tk.	Tk.	Tk.
Income from salaries (section- 21):			
i) Basic salary [(10,000x9) + (10,200x3)]		1,20,600	
ii) Dearness allowance (1,20,600x10%)		12,060	
iii) Medical allowance (300x12)	3,600		
Less: exempted fully (as it is within the tax free limit of 10% of basic or Tk.1,20,000 whichever is lower)	<u>3,600</u>	0	
iv) Bonus [10,000+ 10,200]		20,200	
v) Employer's contribution to RPF [1,20,600x10%]		12,060	
vi) Interest on RPF@14%	1,500		
Less: Exempted up to@ 14.5% or one-third of basic and D.A.. i.e.44,220 whichever is lower	<u>1,500</u>		
vii) Rent free accommodation (1,20,600x25%)		30,150	
viii)Car facility (1,20,600x5% or Tk.60,000 whichever is lower)		60,000	
ix) Entertainment allowance		<u>5,000</u>	
Total			<u>2,60,070</u>

Computation of investment allowance:

Particulars	Amount (Tk.)
1. Purchase of shares of listed company	2,000
2. Employee's and employer's contribution to RPF(12,060x2)	24,120
3. Payment of life insurance premium 4,000; maximum (10% of the policy value i.e. 10% of 35,000 = 3,500)	3,500
4. Contribution to Deposit Pension Scheme (500x12)	6,000
Total	<u>35,620</u>

As total income exceeds Tk.2,50,000 so minimum tax to be paid.

Worked example 5

Mr. Zaman Hoque was the HR Manager of Axiata Bangladesh Ltd. On July 2017, his basic salary was Tk.52,000 in the scale of 40,000-4,000x8-72,000. His date of yearly increment is on 26th March. He was terminated from Axiata Bangladesh Ltd. on 30th April, 2018 and Joined Grameen phone Ltd. on 1st June of the same year. During the income year his income from Axiata Bangladesh Ltd and Grameen phone Ltd. are as follows:

From Axiata Bangladesh Ltd.:

He received dearness allowance @ 10% of basic salary and medical allowance Tk. 2000 per month. He received two festival bonus each equivalent to one month's basic salary in the month of September and April respectively. He contributes 10% of his basic salary to a recognized provident fund. He has been provided with a rent-free quarter and a full time car by the employer. During the year he has also received an entertainment allowance of Tk. 1,000 per month. He has received compensation for the termination of Tk. 2,00,000 and gratuity of Tk. 1,00,000. Moreover, his accumulated balance from the RPF was Tk. 1,80,000.

From Grameen Phone:

His basic salary is Tk. 60,000 per month with 40% house rent allowance and Tk. 5,000 medical allowance per month. He is also entitled to receive Tk. 4,000 conveyance allowance per month. He contributes 10% of his basic salary to a recognized provident fund. His employer also contributed the same.

His taxable income from other sources was Tk. 2,13,119 during the year. During the year total TDS from various sources of his income was Tk. 20,000. Moreover, his refund claims of Tk. 10,000 for excess payment of tax in the last assessment year was to be adjusted with current year's tax liability. His investments during the year were as follows:

- Purchase one laptop Tk. 1,10,000.
- Payment of his life insurance premium Tk. 20,000 (Policy value Tk. 5,00,000)
- Contribution to DPS Tk. 3,000 per month.

Compute total income and tax liability of Mr. Zaman Hoque for the assessment year 2018-19.

Solution 5:

Assessee: Mr. Zaman Hoque
Assessment year 2018-19
Accounting year ended 30 June 2018
Computation of total income and tax liability

Heads of income		Tk.	Tk.
Income from salaries (section - 21):			
i) Basic salary (Note 1)		5,84,774	
ii) Dearness allowance (Axiata) $(5,24,774 \times 10\%)$		52,477	
iii) Medical allowance (Total) $[(2,000 \times 10) + 5,000]$	25,000		
Less: Exempted fully as it is within the exemption limit.	<u>25,000</u>	-	
iv) Bonus $[52,000 + 56,000]$		1,08,000	
v) Employer's contribution to RPF (Total)			
$[5,84,774 \times 10\%]$		58,477	
vi) Rent free accommodation (Axiata):			
25% of B.S. $(5,24,774 \times 25\%)$		1,31,194	
vii) Car facility (Axiata) $(5,24,774 \times 5\% \text{ or } \text{Tk.} 60,000)$		60,000	
viii) Entertainment allowance (Axiata) $(1,000 \times 10)$		10,000	
ix) Compensation (Axiata)		2,00,000	
x) Gratuity (Axiata)	1,00,000		
Less: Exemption: up to Tk.2.5 crore	<u>1,00,000</u>		
xi) Accumulated balance of RPF (Axiata)	1,80,000		
Less: Exemption: Full	<u>1,80,000</u>	-	
xii) House rent allowance (Grameen phone)			
$(60,000 \times 40\%)$	24,000		
Less: Exempted Tk. 25,000 per month or 50% of Basic salary whichever is lower	<u>24,000</u>		
xiii) Conveyance allowance			
Less: Exempted – Upto Tk, 30,000	<u>30,000</u>		

			12,04,922
Income from other sources			<u>2,13,119</u>
Total income			<u>14,18,041</u>

Computation of Investment allowance

Particulars	Amount (Tk.)
1. Purchase one laptop (allowable up to Tk. 100,000)	1,00,000
2. Payment of life insurance premium 20,000; maximum (10% of the policy value i.e. 10% of 5,00,000 = 50,000)	20,000
3. Contribution to DPS (3,000 x12)	36,000
4. Employee's and employer's contribution to RPF (58,477x2)	1,16,954
Total	2,72,954

Maximum limit of the investment allowance: 25% of Total income (14,18,041 x 25%) = 3,54,510 or Tk. 1,50,00,000 or Tk.2,72,954 whichever is less, So, the required amount of investment allowance on which 15% and 12% tax rebate will be applicable is Tk. .2,72,954.

Tax liability:

	Rate	Amount (Tk.)
On the first Tk. 2,50,000	0%	Nil
On the next 4,00,000	10%	40,000
On the next 5,00,000	15%	75,000
On the next 2,68,041	20%	53,608
Total 14,18,041		1,68,608
Less: Investment tax rebate (2,50,000x15% + 22,954x12%)		(40,254)
TDS		(20,000)
Refund adjustment		(10,000)
Net tax liability		98,354

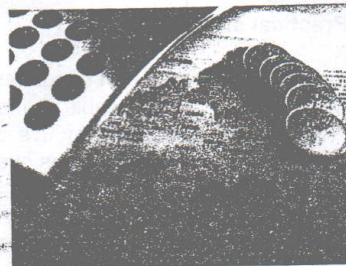
Note:

- Total basic salary:
From Axiata:
B. S. from July 16 to February 17= [Tk. 52,000 x 8] = Tk. 4,16,000
B. S. for the month March 18 = [(52,000"25/31) + (56,000"6/31)] = Tk. 52,774
B. S. for the month April 18 = Tk. 56,000
= Tk. 5,24,774

From Grameen phone:
B. S. for the month June 17 = Tk. 60,000
Total basic salary for the income year 2017-18 = Tk. 5,84,774
- Since conveyance allowance is received from a separate company, the exemption limit has considered.
- In the month of May he was not employed. So, Basic salary for the month of May is not taken into consideration.

Self-assessment question

- (a) Explain what is meant by "perquisite" under the Income Tax Ordinance, 1984?
(b) Does it include employer's contribution to a recognized provident fund?
(c) Discuss the allowable perquisites under the Ordinance.
- A question may arise why employer's contribution to RPF is once added to income and again rank for investment allowance of an assessee. This device is meant to raise total income so that the assessee is put into higher slab of income tax rate.



Chapter 5

Income from interest on securities

Contents

Introduction

Examination context

Topic list

5.1	Introduction
5.2	Nature of securities
5.3	Cum-interest vs. ex-interest
5.4	Bond washing transactions through sale and buy back of securities
5.5	Type of securities
5.6	Interest grossing -up
5.7	Admissible expenses
5.8	List of tax free securities

Worked examples

Introduction

Learning objectives

- Understanding the head 'Interest on Securities'.
- Compute the taxable income under the head 'Interest on Securities'.
- Knowing different type of securities available in Bangladesh.
- Identify the allowable deductions under the head 'Interest on Securities'.
- Illustrate the allowable, inadmissible and not permissible deductions in determining the income from 'Interest on Securities'.
- Define cum-interest, ex-interest and bond washing transactions.

Practical significance

Income from interest on securities is the second head of income. It is very important to know interest bearing securities available in market and how this income is brought under the purview of taxation. Though the revenue from this source is not so significant to the Government, still this chapter comprises some technicalities over which professional accountants should have sufficient expertise.

Application of cum and ex interest and bond washing transaction in computing taxable interest income is very important and necessitates professional judgment and competence. These topics are explained in this chapter.

This chapter has practical significance in a sense that the students will interact with the capital market directly. Approved commercial securities are traded in the market and thus the professional accountants can play a significant role in computing tax liability of individuals and corporate as well.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'interest on securities' is one of the seven heads of income and includes some complexity? Do you feel that you are in a position to compute tax liability under this head independently? Can you visualize the scope of tax avoidance and remedies in this regard?

Working context

In practice, as the accountants are sometime required to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income from different heads for a particular year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses and exemptions so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

You will also be able, using this knowledge, to plan tax in such a way that tax can be minimized.

Exam requirements

In the examination, candidates may be required to:

- Identify income under the head 'interest on securities'.
- Define the concepts of interest bearing securities.
- Recognize the allowable expenses and inadmissible expenses under the head.
- Define different types of securities.
- Calculate taxable income under the head 'interest on securities'.
- Understand the application of ex and cum interest.
- Handle situations like bond washing transactions.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of one concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income.

5.0 INTEREST ON SECURITIES

Section overview

- There are seven heads of income. Interest on securities is one of them.
- There are some allowable, inadmissible and not permissible deductions under different heads of income.
- Computation of taxable interest on securities is very important.
- Grossing up of interest on securities.
- Tax shall be payable when an assessee actually received interest on securities.
- The two main methods of accounting are cash system and mercantile system.
- An assessee may be allowed to set off of losses but carry forward not allowed.

5.1 Introduction

Scope

As per section 22 of ITO 1984, Income classifiable under the head "Interest on Securities" includes:

- (i) Interest receivable by the assessee on any security of the Government or approved by the Government;
- (ii) Interest receivable by him on debentures or other securities issued by or on behalf of a local authority or a company.

Section – 22 deals with interest on securities issued by

- (i) the Government,
- (ii) a local authority, or
- (iii) a company.

Debentures or other securities issued by a company also fall within the scope of this section.

Exclusion

All other securities, e. g. securities issued by a foreign Government, etc. are outside the ambit of this section, and interest thereon would be charged u/s 28 or 33. The shares of a company cannot be called securities. Dividends on shares would be taxable under the residuary head of section. 33.

When payable

Under section 22, tax is payable in respect of interest 'receivable' by the assessee on securities. But interest on securities becomes income only when it is actually received and not when it is due or capable of being received by the assessee. The word 'receivable' in this section has reference to the quantum of interest taxable and not to the time of taxability. If interest is actually received some times after it becomes due and receivable, the date of taxability is the date when it is received and not the date when it becomes due.

Allowable deductions

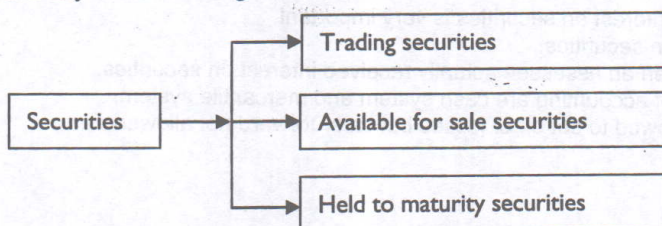
Deductions permissible in the determination of income from interest on securities as per section 23 are:

- (h) Commission or charges deducted from interest by a bank realizing the interest on behalf of
- (i) the assessee;
- (ii) Interest payable on money borrowed for the purpose of investment in the securities. To claim relief for interest on borrowed fund, such fund must be borrowed solely for investment in securities and should be so used throughout, even if the moneys borrowed for business purpose are invested in securities for a period under some legal compulsion, no deduction for interest under this section is allowed [*Indian Steamship Co. V. CIT (1953) I. T.R. 448*].

However, deduction on account of interest of tax-free Government securities shall not be allowed. Likewise, deduction will not be allowed in respect of interest payable outside Bangladesh on which tax has not been paid or deducted.

5.2 Nature of securities

Dealings of securities may have various purposes from the part of the investors. For example, it may take any of the following three natures:

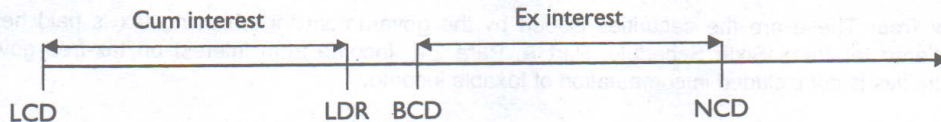


Trading securities are those types of securities where the main purpose is to earn profit through trading (buying and selling) of securities. However, held to maturity securities are those types of securities where investment is made for a specific time period. However, available for sale securities fall in between which is not an investment for long time or where the dealing is not so frequent. The investors wait for a while to see how to maximize profit on the deal. As interest on securities is a separate head of income, even if the securities are held as trading assets within the course of business undertaken by a bank or an insurance company or a stock broker, the interest must be charged under this head and not under section 28 as income from business or profession or under section 33 as income from other sources [*Central Exchange Bank LTD. V. C.I.T. (1955) I.T.R. 167*].

5.3 Cum-interest vs. ex-interest

Securities purchased with cum-interest means buying the securities with the option of interest, i.e., buying it before the date when interest on the securities falls due. And when it is purchased after the due date of interest on such securities, it is securities purchased with ex-interest. Interest on securities is deemed to accrue on a certain date and not on a day to day basis. When securities are bought cum interest, tax is assessable on the whole amount of interest when received subsequently. There is wide scope to avoid tax through systematically buying and selling securities just on the eve of the payment of interest and section 106 has given sufficient authority to the DCT to handle those cases of tax avoidance. The assessee does not have to be owner of the securities throughout the period for which such interest arises and paid off. Even one day of ownership is enough to attract the provisions of the section.

To understand the application of cum and ex interest, let's assume that it takes 10 days to close books prior to coupon payment date. Therefore if the coupon date is the 31st December each year, the books closed date would be listed as the 21st December (there are exceptions). The day prior to the Books Closed date is known as the last date to register (LDR) - this is the date on which the holders of the bond are designated to receive the coupon. Essentially, the issuer or central depository (or settlement agent) will establish who owns the bond on the LDR date and the coupon will be paid to this person on the coupon date irrespective of whether they actually own the bond on Coupon payment date.



Where:

LDR = Last date to register

NCD = Next coupon date

LCD = Last coupon date

BCD = Books closed date

This books closed period is referred to as the ex-interest period (or just ex period) i.e. the date when the purchaser of the bond is not entitled to the next coupon. A bond which is trading cum interest simply means that the purchaser will receive the next coupon, the whole amount.

5.4 Bond washing transactions through sale and buy back of securities

When some transactions happened between two parties to wash out the impact of interest on taxable income and thus avoiding the taxes on that mutually by both of the parties, such type of transaction is referred to as bond washing transaction. It is a smart way of tax avoidance. In this case, securities are sold cum interest with an agreement to re-sell or re-transfer the securities. Securities are sold to a person whose income is less than the minimum taxable limit and then he doesn't need to pay any tax on interest on securities since his income is less than the taxable limit. On the other hand since securities are capital asset, no tax will be given on the disposal value of the securities by the seller. In this way both the seller and buyer can avoid tax.

To prevent the avoidance of tax in this manner, section 106(1) of the ITO, 1984 provides that where a security owner transfers the securities on the eve of due date of interest and reacquires them eventually, the interest received by the transferee/purchaser will be deemed as income of the transferor/seller and, accordingly, it will be included in the total income of the transferor/seller and not the transferee/purchaser. There is wide scope to avoid tax in this way and Section 106 has given sufficient authority to the DCT to handle those cases of tax avoidance. It should be mentioned here that stocks/shares are also defined as securities at section 106

5.5 Types of securities

In terms of taxability, securities may be classified as either Government securities (securities issued or approved by the Government) or Commercial securities (securities issue by others).

Securities	Government	Tax free	Approved
		Less tax	
	Commercial	Debenture	
		Zero coupon bonds	
			Unapproved

Government securities: Securities issued or approved by the Government fall under this category. It may be tax free if tax is not imposed on interest or may be less tax on the reasoning that the assessee will enjoy some exemption on interest income.

Tax free: These are the securities issued by the government for which no tax is paid hence it is declared tax-free. [Sixth Schedule, Part A, Para 24]. Income from interest on tax-free government securities is not included in computation of taxable income.

Less tax: These are the government securities on which tax is deducted at source at specified rate [current TDS rate is **5% at upfront system**]. So the assessee receives the whole amount of interest at the time of maturity, because withholding tax collected at the time of issue by the issuing authority.

Securities based on Islamic principles: As interest/profit cannot be determined in advance in case of Islamic securities, so 5% tax to be deducted at the time of payment on maturity not at upfront system.

Commercial securities: Securities issued by or on behalf of a local authority or a company and approved by the SEC will be considered as commercial securities. These types of securities may be either debenture or zero coupon bonds.

Debenture: These are the securities issued by or on behalf of a local authority or a company and approved by the SEC. Thus, debentures are approved securities.

Zero-coupon bond: A Zero-coupon bond is such type of bond where coupon (interest) is zero. This type of securities is initially sold at a price lower than its face value and the owner receives the face value at maturity. Thus, the gap between the purchase price and face value is the benefit of buying such security to the owner. Any income derived from Zero-coupon bond received by a person other than Bank, Insurance or any Financial Institution is fully tax free [Sixth Schedule, Part A, Para 40]. The price of a zero-coupon bond can be calculated by using the following formula:

$$P = M / (1+r)^n$$

Here P represents price, M represents maturity value; r represents investor's required annual yield / 2 and n is the number of years until maturity x 2.

Example:

If you want to purchase a Company XYZ zero-coupon bond that has a BDT 1,000 face value and matures in three years, and you would like to earn 10% per year on the investment, using the formula above you might be willing to pay:

$$\text{BDT } 1,000 / (1+.05)^6 = \text{BDT } 746.22$$

Thus the tax free income from investment in zero-coupon bond here will be BDT 253.78 (BDT 1,000 – BDT 746.22).

5.6 Interest grossing up

As tax is not deductible from interest on securities at the time of maturity rather tax @ 5% collected by the issuing authority at **upfront system** at the time of issuing such securities, so there is no need to gross-up.

5.7 Expenses admissible

As per section 23 of ITO 1984, the following expenses are admissible for deduction to compute income taxable under the head:

1. **Bank commission/charges for collection of interest:** If such interest is collected through bank and eventually bank charges the client for collecting interest, such amount can be deducted for computing taxable income with the following two exceptions:
 - a. This deduction is not permissible if such charge is made for collecting interest of such securities on which tax cannot be imposed. Example: tax free government securities, zero coupon bond.

- b. If bank commission is charged for purchasing securities, it will not be considered as an allowable expense.
2. **Interest on borrowed capital for investment in securities:** Any interest on money borrowed for the purpose of investment in the securities by the assessee will be an allowable expense. But interest on borrowed capital for investment in tax-free government securities and zero-coupon bond is not allowable expense as interest on these securities is not taxable.

5.8 List of tax free securities

Interest income is exempted from taxes in following occasions as per ITO, 1984:

Name	Reference
Tax-free government securities	Sixth Schedule, Part A, Para 24
[1] Wage earners development bond [2] US dollar premium bond [3] US dollar investment bond [4] Euro premium bond [5] Euro investment bond [6] Pound sterling premium bond [7] Pound sterling investment bond	Sixth Schedule, Part A, Para 24A
Zero-coupon bond	Sixth Schedule, Part A, Para 40

Worked example

Worked example 1:

ABC Bank Ltd. a Bangladeshi bank received interest on Treasury bond Tk.10,00,000/ during the calendar year 20167. Bangladesh Bank neither deducts tax at upfront system or at the time of maturity. Calculate income under section 22 and tax to be paid.

Solution 1:

ABC Bank Ltd.
Assessment year 2018-19
Income for year ended on 31st December 2017

Computation of income from interest on security under section 22:

Interest on securities (Treasury Bond) Fully taxable as it is not tax-free-----Tk.10,00,000
Tax @ 40% comes at Tk.4,00,000 (No tax credit as there was no TDS)

Worked example 2:

Mr. Jamal Kaiser has the following interest income from investments in securities during the income year 2017-18:

- Tk. 100,000 from interest on Bangladesh Wage Earner's Development Bond (Purchased on 1st September, 2012).
- Tk. 200,000 from Bangladesh Investment Bond (Purchased on 30th June, 2015). Tax @ 5% was deducted at that time at upfront system. That's why no further tax was deducted at the time of maturity on 30th June, 2018.
- On 31st March, 2015, 3 years Zero Coupon Bond of Tk. 50,000 was matured and he has received the amount as maturity value, whether the acquisition price of the same was Tk. 35,000. The collection fee of Tk. 500 was charged in this regard by his bank.

Compute income from interest and tax payable by Mr. Jamal Kaiser for the income year 2017-18.

Solution 2:

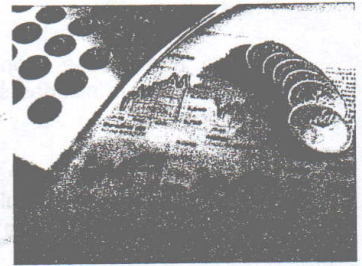
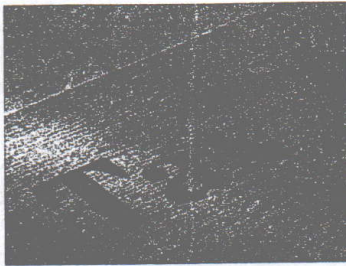
Mr. Jamal Kaiser
Assessment year: 2018-19
Income year: 2017-18
Computation of total income

	Tk.	Tk.
Income from securities (section: 22 & 23):		
(1) Interest form tax free government securities (wage earner development Bond)	1,00,000	
Less: exemption (full) Note-1	1,00,000	0
(2) Interest on Bangladesh Investment Bond	2,00,000	2,00,000
(3) Interest on zero coupon bond	15,000	
Less: exemption (full) As per 6 th Schedule(Part-A) Para-40	15,000	0
Taxable income from interest on securities		2,00,000
		=====
Tax zero as income is below taxable ceiling of Tk.2,50,000 assuming he has no other income source.		

Note: (1) 10% Bangladesh Wage Earner's Development Bond was tax-free as per SRO No 160 dated 25/05/1981 now it is taxable through SRO No.225 dated 04/07/2011 deleting the previous SRO but as it was purchased before 01/07/2011 so it will remain tax free as per circular No-1 of 2011. Interest is considered for the whole year as it was on hand from the first day of the income year. **Now it is fully tax free as per 6th schedule (part-A) para-24A.**

Self-assessment question

1. (a) What incomes are included in "Interest on securities" under the Income Tax Ordinance 1984. Is interest on private loan is an interest on securities?
- (d) What deductions are allowable from such income under the Ordinance?
- (e) Do you know the list of tax free securities



Chapter 6

Income from house property

Contents

Introduction

Examination context

Topic list

6.1	Introduction
6.2	Annual value
6.3	Self-occupancy
6.4	Allowable deductions
6.5	Non assessable income
6.6	Deduction of tax at source from house rent

Worked examples

Introduction

Learning objectives

- Identify the income under the head 'Income from House Property'.
- Compute the taxable income under this head.
- Knowing annual value and its computation.
- Identify the allowable deductions under the head.
- Identify non-assessable income under the head.
- Deemed income from house property
- TDS from house rent in case of commercial use.
- Computation of net tax liability from house property income.

Practical significance

Income from house property is the third head of income and very significant for income tax professionals. It includes some conceptual issues and technicalities that require clear understanding about the topic.

Annual value is the value representing the gross rent from house property. It is the higher value of annual rent and reasonable rent determined by the DCT. Annual rent is again adjusted for different expenses and TDS. These computations require some rationality on part of the tenants and landlords.

Scope of allowable deductions is another difficulty. Capitalized expenses cannot be deducted and in case of partly let out properties, expenses are deducted proportionately. Repairs and maintenance is considered separately depending on the status of the property as either commercial or residential due to its significance. Advance receipts from the tenants are considered as income and at the time of refund it has got separate treatment. All of these adjustments are very technical and sometimes require professional judgment and this is the reason why the chapter is practically significant.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think

Do you realize that the computation of taxable income under the head 'Income from House Property' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Do you understand application of tax deducted at sources by the tenants?

Working context

In practice, as the accountants are sometimes required to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income for any income year under different heads. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses in different heads of income so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Have clear concept of house property income.
- Define annual value.
- Recognize the allowable deductions and allowances.
- Know self-occupancy and its impact in computing taxable income under the head.
- Identify tenant's expenses borne by the landlord and landlord's expenses borne by the tenants.
- Know TDS rate and its application in computing net tax liability.
- Determine interest on borrowed capital and installments for loan taken during construction period.
- How to adjust advance received from tenants.
- Know impact of capitalized expenses in computing house property income.
- Know the application of vacancy allowance and allowances for un-collectible rents.
- Computing repairs and maintenance expenses in different cases.
- Know the treatment of unspent amount of repairs and maintenance
- Know the residential and commercial use of house property and its impact on computing taxable income.

- Understand different status of a house property; fully let out, partly let out and self-occupied.
- Have knowledge about the formalities to be followed by the owner of the rented house receiving monthly rent of more than Tk. 25,000.
- Know penal measures if the landlord does not follow rules/instructions by the NBR.
- Compute net tax liability.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income under the head 'income from house property' which is vital for calculating total tax liability. Clear concept and understanding of the contents presented in this chapter will help candidates to resolve any problems relating to computation of income from the head.

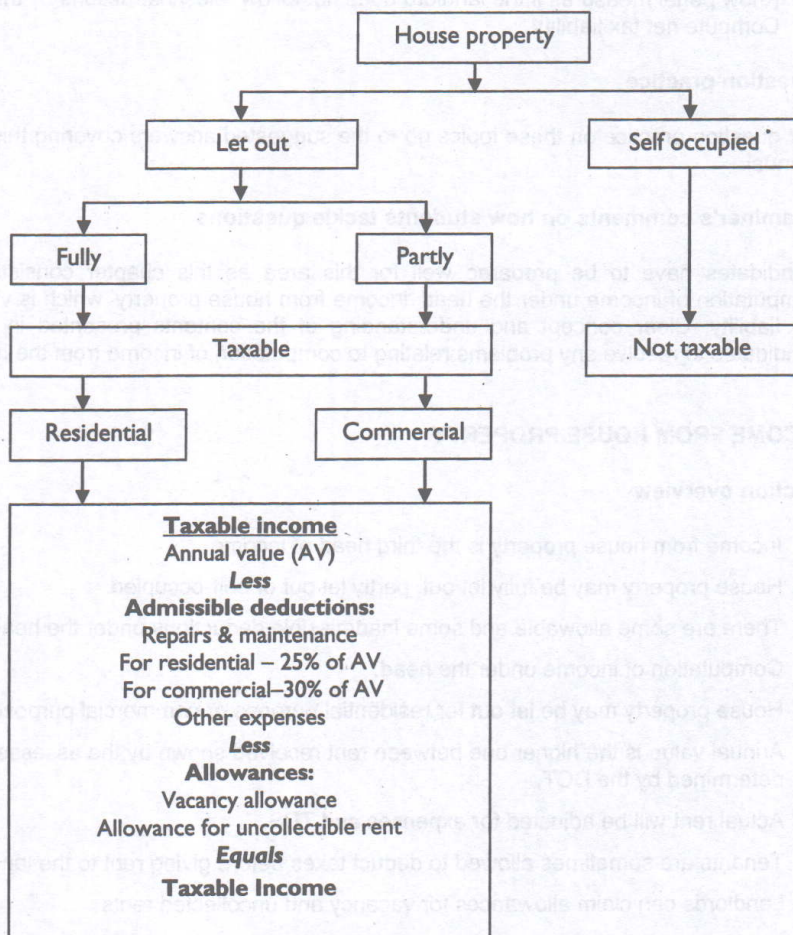
6.0 INCOME FROM HOUSE PROPERTY

Section overview

- ➔ Income from house property is the third head of income.
- ➔ House property may be fully let out, partly let out or self-occupied.
- ➔ There are some allowable and some inadmissible deductions under the head.
- ➔ Computation of income under the head.
- ➔ House property may be let out for residential purpose or commercial purpose.
- ➔ Annual value is the higher one between rent received shown by the assessee and reasonable rent determined by the DCT.
- ➔ Actual rent will be adjusted for expenses and TDS.
- ➔ Tenants are sometimes allowed to deduct taxes before giving rent to the landlords.
- ➔ Landlords can claim allowances for vacancy and uncollected rents.
- ➔ Advances received from tenants that are not adjustable with rents are considered as income.

6.1 Introduction

Scope



Section – 24 is confined to 'buildings and lands appurtenant thereto which may be conveniently called 'house property'. Tax under this section is levied upon the owner, legal or beneficial, and not upon the occupant. It is levied not upon the actual income from the property but on statutory or artificial income represented by annual value of the house property.

Income from house property is taxable on the basis of its annual value of any house property, including furniture, fixture, fittings etc. whether used for commercial or residential purposes.

6.2 Annual value

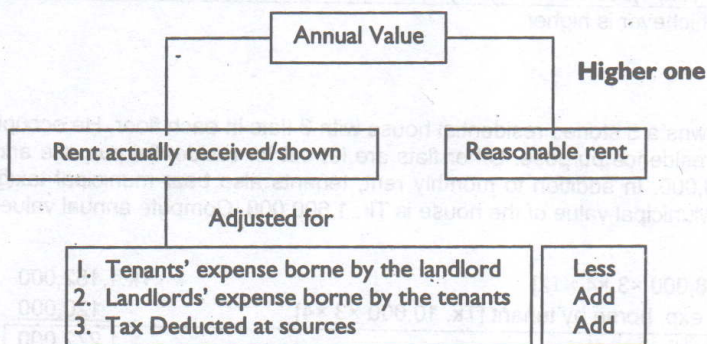
Annual value has been defined in section 2(3) of the Ordinance. Under section 2(3) (a) 'annual value' shall be deemed to be - (a) in relation to any property let out-

- (i) the sum for which property might reasonably be expected to let from year to year and includes any amount received by letting out furniture, fixture, fittings etc.; or
- (ii) where the annual rent in respect thereof is excess of the sum referred to in section 2(3)(a)(i), the amount of the annual rent.

Thus, annual value is not necessarily be the annual rental income disclosed by an assessee but the value determined as such by the tax authorities. If the annual rent is higher than the value as determined by the tax authorities on the basis of the expected rent, annual rent is considered as the annual value.

Where the property is owned by two or more persons and their respective shares are definite and ascertainable, the owners are assessable on their respective share of income from the property and not jointly as an association of persons.

Thus the annual value will be the higher one between rent received shown by the assessee and reasonable rent determined by the DCT. Actual rent is the amount of rent received or deemed to be received by the owner. It may require some adjustments as shown below:



Quick Guide

Tenants expenses (Expenses for temporary occupancy)	WASA bill, Gas bill, Electricity bill
Landlords expenses (Expenses for ownership)	Municipal tax, Insurance premium, Service charge, interest on house building loan etc.

Illustration 1

Mr. B.Rahman owns a 5 storied residential house with 3 flats in each floor. This is a fully let out house property and monthly rent of each flat is Tk. 8,000. Municipal value of the house is Tk. 16,00,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 × 3 × 5 × 12]	Tk. 1,440,000
Municipal value	Tk. 1,600,000
Annual value, whichever is higher	Tk. 1,600,000

Illustration 2

Mr. B. Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000. Municipal value of the house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 × 3 × 4 × 12]	Tk. 1,152,000
Municipal value [(Tk. 1,600,000 × 15)/12]	Tk. 1,280,000
Annual value, whichever is higher	Tk. 1,280,000

Illustration 3

Mr. B Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000 including Tk. 1,000 for water, gas and electricity bill of the tenant. Municipal value of the house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 × 3 × 4 × 12]	Tk.1,152,000
Less: Tenant's expense borne by landlord [Tk. 1,000 × 3 × 4 × 12]	<u>144,000</u>

Actual rent after adjustment	1,008,000
Municipal value [(Tk. 1,600,000 × 15)/12]	<u>1,280,000</u>

Annual value, whichever is higher 1,280,000

Illustration 4

Mr. B. Rahman owns a 5 storied residential house with 3 flats in each floor. He occupied all the flats in second floor for residence purpose. Other flats are let out for residential purpose and monthly rent of each flat is Tk. 8,000. In addition to monthly rent, tenants also bear municipal tax@ Tk. 10,000 per tenant annually. Municipal value of the house is Tk. 1,600,000. Compute annual value.

Annual value:

Actual rent [Tk. 8,000 × 3 × 4 × 12]	Tk.1,152,000
Add: Landlord's exp. borne by tenant [Tk. 10,000 × 3 × 4]	<u>120,000</u>

Actual rent after adjustment	1,272,000
Municipal value [(Tk. 1,600,000 × 15)/12]	<u>1,280,000</u>

Annual value, whichever is higher 1,280,000

Illustration 5

Mr. B. Rahman owns a 5 storied building which is let out to a business house. After deducting taxes, Mr. B. Rahman receives Tk. 1,900,000 annually. Mr. B Rahman is responsible to pay for all gas, electricity and water bills of the tenant which amount to Tk. 80,000 annually. However, as per agreement, the business house is required to pay municipal tax and insurance premium for the building which amounts to another Tk. 180,000. Municipal value of the house is Tk. 2,000,000. Compute annual value. [Note: Applicable TDS rate is 5%]

Annual value:

Actual rent	Tk.1,900,000
Add: Landlord's expense borne by tenant	180,000
Add: TDS [(Tk. 1,900,000/1-0.05) × 0.05]	100,000
Less: Tenant's expense borne by landlord	<u>(Tk. 80,000)</u>

Actual rent after adjustment	Tk.2,100,000
Municipal value	<u>2,000,000</u>

Annual value, whichever is higher 2,100,000

6.3 Self occupancy

The house property may be occupied by the owner either for residential or business purpose. In such cases, the following points are important to note down:

- If self-occupied for residential purpose: Annual value is not required to be determined since there is no income from house property and no tax as well.
- If self-occupied for business purpose: It is assessed under the head 'income from business and profession' as per section 28. He is not entitled to claim house rent as deduction under this section 29; however, he can claim depreciation on such property.

6.4 Allowable deductions

As per section 25, while determining the net income under Income from house property, the following deductions are allowable:

- (i) Any sum payable to Government as land development tax or rent on account of the land comprised in the property.
- (ii) Any premium paid to insure the property against risk of damage or destruction
- (iii) Interest on mortgage or other capital charge for the purpose of reconstruction, extension or improvement of the house property.
- (iv) Annual charge not being a capital charge.
- (v) Ground rent.
- (vi) Interest payable on capital borrowed from bank or financial institution for the purpose of acquisition, construction, reconstruction, repair or renovation of the house property.
- (vii) Where the property has been constructed with borrowed capital from bank or financial institution and no income was earned during the period of construction, interest payable during that period on such capital, in three equal proportionate installments for subsequent 3 years for which income is assessable from that property.
- (viii) In respect of expenditure for repairs, collection of rent, water and sewerage, electricity and salary of darwan, security guard, pump-man, lift-man and caretaker and all other expenditure related to maintenance and provision of basic services:
 - (a) an amount equal to 25% of the annual value of the property in respect of all expenses mentioned in (i) above where the property is used for residential purpose;
 - (b) an amount equal to 30% of the annual value of the property in respect of all expenses mentioned in (i) above where the property is used for commercial purpose.

In case the owner of the property did not claim the required amount of repairs and maintenance or claim less amount than the statutory deduction, then the unspent amount will be treated as deemed income as per section 19(30).

- (ix) Proportionate vacancy allowance of the period for which the property remains wholly unoccupied and in case of partly let out property such portion of annual value appropriate to the vacant part as is proportionate to the period of the vacancy of such part.

Interest or annual charge payable outside Bangladesh shall not be allowed as deduction on which tax has not been paid or deducted at source.

6.5 Non assessable income

The following incomes from house property are non-assessable:

1. Annual value of the house used by the owner for his personal purpose i.e. for his own residence or for the purpose of his business or profession [section 24(1)].
2. Where, the whole or part of the property is let out, a sum equal to such portion of the annual value appropriate to the vacant part as is proportionate to the period of the vacancy of such part [section 25(1)(j & k)]
3. Any income derived from house property held under trust or other legal obligation, other than NGO, wholly used for religious or charitable purposes [Sixth Schedule, Part A, Para 1(1)]
4. Any income derived from any building, not less than five storied, having at least ten flats, constructed at any time between July 01, 2009 to June 30, 2014 (both days inclusive), for ten years from the date of completion of construction of the building, if it is situated in any area of Bangladesh other than the areas of City Corporation, Cantonment Board, Tongi Upazila, Narayanganj Paurashaba, Gazipur Pourashava and any Pourashaba under Dhaka district [Sixth Schedule, Part A, Para 38]

6.6 Formalities to be followed by the landlord receiving monthly rent more than Tk.25,000

In case of let out property if the gross monthly rent exceeds Tk. 25,000 the owner shall have to

- (a) Maintain bank account and deposit entire monthly rent directly to the account (irrespective of part or full of rent is received in cash);
- (b) Maintain a register about tenants, house rent received from the tenants.

If he fails to do so then penalty may be imposed by the income tax authority @ 50% of tax on house property income or Tk. 5,000 whichever is higher.

6.7 Tax to be deduction at source from house property

Where the tenant in respect of a house property is the government or any authority having the power to deduct taxes, shall deduct @ 5% tax as advance tax. But such amount of tax is subject to refund if income of the owner is not tax payable or if amount of advance tax is more than the owner's total tax liability. No such deduction is required when the owner holds certificate stating that there is no assessable income against this assessee.

According to section 53A of the ITO, 1984 –

1. Where, the Government or any authority, corporation or body, including its units, the activities or the principal activities of which are authorized by any Act, Ordinance, order or instrument having the force of law in Bangladesh or any company as defined in clause (20) of section 2, or any banking company or any co-operative bank established by or under any law for the time being in force or any non-governmental organization run or supported by any foreign donation or assistance or any university or medical college or dental college or engineering college, or any school, college, hospital, clinic or diagnostic center is a tenant in respect of a house property, the tenant shall deduct tax @5% from the house rent paid or payable as advance tax.
2. Where, after the assessment made for the relevant year, it is found that no tax was payable by the owner of the house property or the amount of tax deducted is in excess of the amount payable, the amount deducted shall be refunded,
 - (a) if no tax was payable, in full, or
 - (b) if the amount deducted is in excess of the amount payable, to the extent of the excess deduction to the owner of the house property.
3. Where the DCT, on an application made in this behalf, gives a certificate in the prescribed form to an owner of house property that, to the best of his belief, the owner is not likely to have any assessable income during the year or the income is otherwise exempted from payment of income tax under any provisions of this Ordinance, payment referred to in sub-section (1) shall be made without any deduction until the certificate is cancelled.

Rate of TDS from house property –

According to section 53A of the ITO, 1984, every person mentioned in that section who is responsible for making any payment to the owner of a house property on account of house rent shall deduct tax @ 5% on such payment.

Worked examples and solutions

Worked example 1:

Mr. Mushtaque Ahmed's house is let out at Tk. 10,000 per month. Income year ended on 30 June 2018. Tenant quitted the house on 31 March 2018 and owed Tk. 20,000 for rent being unpaid. House remained vacant for 3 months during the alterations. The owner claimed the following deductions:

	Taka
Cost of repairs	15,000
Alterations expenses	30,000
Interest on mortgage	12,000
Fire insurance premium	5,000
Municipal tax	10,000

Legal action to recover unpaid rent which was later realized – Tk. 6,000.

Required: Compute his house property income.

Solution 1:

Mr. Mushtaque Ahmed

Assessment year 2018-19

Income for year ended on 30 June, 2018

Computation of house property Income:

Annual value:

Annual rent (Tk. 10,000 × 12 months)

Reasonable rent

120,000
Not given

Whichever is higher

120,000

Less: Allowable deductions:

Repair and maintenance – 25% of Tk. 120,000

Interest on mortgage

Fire Insurance premium

Municipal tax

Vacancy allowance (Tk. 10,000 × 3)

30,000
12,000
5,000
10,000
30,000

Total Deductions

87,000

33,000

Taxable income under section 24

Deemed income u/s 19(30) Tk. 30,000-15,000-6,000

Total income from house property

9,000

42,000

Worked example 2:

Mr. Faruq owns a residential house at Santinagar, Dhaka, which was constructed 10 years back with a 15% loan of Tk. 20,00,000 from House Building Finance Corporation. The house has been let out for commercial purpose @ Tk. 150,000 per month. The reasonable rent of the house is Tk. 15,00,000.

The following expenses were incurred in the income year 2017-18 for that house:

1. Repair expense Tk. 44,000;
2. City Corporation tax Tk. 35,000;
3. Rent collection expenses Tk. 12,000;
4. Fire insurance premium Tk. 8000 per quarter;

Compute income from house property for the assessment year 2017-18.

Solution 2:

Mr. Faruq
Assessment year: 2018-19
Income year: 2017-18
Computation of total income

Computation of house property income

Annual value:

Actual rent (Tk. 150,000 × 12 months)
Reasonable rent

18,00,000
15,00,000

Whichever is higher

18,00,000

Less: Allowable deductions u/s 25

Repairs & maintenance – 30% of Tk. 18,00,000
City Corporation tax
Fire Insurance premium (Tk. 8,000 × 4)
Interest on HB loan (15% of Tk. 20,00,000)

5,40,000
35,000
32,000
3,00,000

Total deductions

9,07,000

Income u/s 24

Deemed income u/s 19(30)

Total income from house property u/s 24 & 19(30)

8,93,000

4,84,000

13,77,000

Notes:

1. Since the house is let out for commercial purpose, repair and maintenance expense is considered as 30% of the annual value. Here actual spending for repair expenses and collection expenses is less than 30%. So the unspent amount [Tk. 5,40,000 - 44,000 - 12,000 = 4,84,000] will be treated as income from house property as per section 19(30).
2. Annual expenses should be deducted from the annual value of the house. So fire insurance premium is converted to annual figure by multiplying 4 with quarterly premium.

Worked example 3:

Mr. Marwari has a house at Mohakhali C/A with an area of 4,800 square feet. He let out this house to a computer firm at an annual rent of Tk. 600,000. The reasonable rent per square feet at Mohakhali C/A is Tk. 120. The following expenses were incurred in the income year 2017-18 for that house:

1. Repair expense Tk. 90,000;
2. City Corporation tax Tk. 15,000;
3. Fire insurance premium Tk. 9,000;
4. Night guard's salary Tk. 7,000;
5. Installation of electricity line Tk. 25,000;

During the year Mr. Marwari paid installment of loan to HBFC Tk. 67,500 (out of which principal amount is Tk. 64,000). According to the agreement the owner bears the water and gas bill of the tenant which amounted to Tk. 20,000 for the year. Compute income from house property for the income year ended 30th June 2018.

Solution 3:

Mr. Marwari
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Computation of income from house property**Annual value:**

Actual rent	6,00,000	
Less: Tenants' expense borne by the landlord	20,000	
Revised Actual rent	5,80,000	
Municipal value (4,800 × Tk. 120)	5,76,000	
	Whichever is higher	5,80,000

Less: Allowable deductions u/s 25

Repair and maintenance – 30% of Tk. 5,80,000	174,000	
City Corporation tax	15,000	
Fire Insurance premium	9,000	
Interest on borrowed fund (Tk. 67,500 – Tk. 64,000)	3,500	
Total deductions		2,01,500

Income u/s 24**Deemed income u/s 19(30)****Total income from house property u/s 24 & 19(30)**

3,78,500
77,000
4,55,500

Notes:

- Since the house is let out for commercial purpose, repair and maintenance expense is considered as 30% of the annual value. Here actual spending for repair expenses and collection expenses is less than 30%. So the unspent amount [Tk. 1,74,000 - 90,000 - 7,000 = 77,000] will be treated as income from house property as per section 19(30).
- Installation of electricity line is a capital expenditure, so this is not admissible.

Worked example 4:

Mr. Pakrasi is the owner of three houses at Gulshan, Dhaka; Khulsi, Chittagong; and Mia Bazar, Comilla. Details of these houses are given below:

Details	House at Gulshan	House at Khulsi	House at Mia Bazar
Number of floor	3	1	2
Number of flats in each floor	2	1	4
Rental status	Fully let out	Self-Occupied	Partly let out
	Tk.	Tk.	Tk.
Reasonable rent (annual)	9,00,000	1,20,000	7,00,000
Rental value (each flat per month)	12,000	-	7,000
Expenses incurred:			
Repair and maintenance	80,000	25,000	65,000
Insurance premium (quarterly)	2,000	-	1,500
Salary of guard	15,000	5,000	7,000
Ground rent	2,000	3,000	-
Municipal tax (per month)	1,200	600	500
Interest on HB loan	5,000		4,000

In Gulshan, Dhaka one flat remain vacant for two months and in Mia Bazar, Comilla two flats are occupied by his sons who are fully dependent on him. House at Gulshan has been let out for residential purpose while house at Mia Bazar has been let out to a commercial firm. Compute income from house property for the income year ended 30th June 2018.

Solution 4:

Mr. Pakrasi
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Computation of income from house property**House at Gulshan:****Annual value:**

Actual rent (12,000 x 12 x 3 x 2)

8,64,000

Reasonable rent (4,800 x Tk. 120)

9,00,000

Whichever is higher

9,00,000

Less: Allowable deductions

Repair and maintenance – 25% of Tk. 9,00,000

225,000

Ground rent

2,000

Insurance premium (2,000 x 4)

8,000

Municipal tax (1,200 x 12)

14,400

Interest on HB loan

5,000

Vacancy allowance [(9,00,000 x 1/6) x 2/12]

25,000

*Total deductions*2,79,400

620,600

House at Mia Bazar:**Annual value:**

Actual rent (7,000 x 12 x 3 x 2)

5,04,000

Municipal value (Tk. 7,00,000 x 6/8)

5,25,000

Whichever is higher

5,25,000

Less: Allowable deductions

Repair and maintenance – 30% of Tk. 5,25,000

157,500

Insurance premium [(1,500 x 4) x 6/8]

4,500

Municipal tax [(500 x 12) x 6/8]

4,500

Interest on HB loan [4000 x 6/8]

3,000

*Total deductions*1,69,500

355,500

976,100**Income u/s 24****Deemed house property income u/s 19(30)**2,33,500**Total income from house property u/s 24 & 19(30)**12,09,600**Notes:**

- House at Khulsi is occupied by the owner, so there is no tax implication.
- No income was taken on those flats occupied by his son as it was not let out.
- Here actual spending for repair and collection expenses is less than the statutory limit of 25% or 30% of annual value. So the unspent amount [Tk.2,25,000 +1,57,500=3,82,500-80,000-15,000-54,000(6/8th of 72,000)=2,33,500] will be treated as income from house property as per section 19(30).

Worked example 5:

Mr. Jamilur Rahman is the owner of a five-storied building at Lalmatia. He resides with his family in the 2nd floor and all other floors (in each floor there are two units) are let out for residential purpose at a monthly rent of Tk. 10,000 per flat including Tk. 1,000 as WASA and DESA bill. The municipal value of the house is Tk. 1,000,000. Mr. Jamilur Rahman also receives Tk. 450,000 as security money from the tenant which is not adjustable against rent of the units during the income year ended on June 30, 2018.

Mr. Rahman claims the following deductions:

- Repair expenses Tk. 130,000;
- Land development tax Tk. 22,000;

3. Insurance premium Tk. 16,000;
4. Caretaker and Night guard salary Tk. 24,000;
5. Ground rent Tk. 2,000;
6. Alteration cost for ground floor Tk. 30,000.

Mr. Rahman has taken a BMRE (Balancing, Modernization, Renovating and Expansion) loan of Tk. 1,500,000 at a flat interest rate of 18% from BRAC Bank limited on December 15, 2014. During the year one of the tenants in the ground floor leave the house without paying rent for one month. Mr. Rahman even after taking necessary legal action fails to collect this rent. Besides, the same flat remained vacant for another two months during the year. Compute income from house property for the income year ended 30th June 2018.

Solution 5:

Mr. Jamilur Rahman
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Computation of income under from house property

Annual value:

Actual rent (Tk. $10,000 \times 4 \times 2 \times 12$)	9,60,000
Less: Tenants' expense borne by the landlord (Tk. $1,000 \times 4 \times 2 \times 12$)	96,000
Revised actual rent	8,64,000
Reasonable rent (10,00,000 \times 4/5)	8,00,000

Whichever is higher

8,64,000

4,50,000

13,14,000

Add: Security money received u/s 19(22) (note-1)

Annual value + security money

Less: Allowable deductions(u/s-25)

Repair and maintenance – 25% of Tk. 8,64,000	216,000
Land Development tax (4/5)	17,600
Insurance premium (4/5)	12,800
Ground rent (4/5)	1,600
Vacancy allowance (Tk. $8,64,000 \times 1/8 \times 2/12$)	18,000
Allowance for uncollectible rent (Tk. $8,64,000 \times 1/8 \times 1/12$)	9,000
Interest on borrowed fund (18% of Tk. 1,500,000)	270,000

Total deductions

5,45,000

7,69,000

92,800

8,61,800

Income u/s 24

Deemed house property income u/s 19(30) note-2

Total income from house property u/s 24 & 19(30)

Note 1: The amount received as security money not adjustable against rent is deemed to be the income of the assessee for the income year in which it is received and be classified under the head "Income from House Property" under section 19(22). Assume that assessee did not exercise his option to allocate this deemed income over 5 years.

Note-2: Here actual spending for repair and collection expenses is less than the statutory limit of 25% of annual value. So the unspent amount [Tk. 2,16,000 – 1,23,200(4/5th of 1,54,000)=92,800] will be treated as income from house property as per section 19(30).

Worked example 6:

Mr. Subir Mazumder is the owner of a two-storied building at Dhanmondi where he stays with his family in ground floor and the 1st floor was let out to a government authority at a gross monthly rent of Tk. 30,000. However, he has taken a 13% loan of Tk. 500,000 on November 01, 2016 from HBFC for modernization of the 1st floor of his building and the floor remained vacant for two months during the modernization period. It is

again let out to the same authority from January 1, 2017 at a gross monthly rent of Tk. 50,000. The government authority deducts tax at source at prescribed rate before paying the rent to him. The municipal value of the house is Tk. 900,000.

The following expenses were incurred in the income year 2017-18 for his whole building:

1. Repair expenses Tk. 50,000;
2. City Corporation tax Tk. 22,000;
3. Insurance premium Tk. 16,000;
4. Caretaker and Night guard salary Tk. 24,000;
5. Land revenue paid Tk. 2,000.

Compute income from house property for the income year ended 30th June 2018.

Solution 6:

Mr. Subir Mazumder
Income year: 2017-18
Assessment year: 2018-19
Computation of house property income

Annual value:

Actual rent (Tk. 30,000 × 6) + (Tk. 50,000 × 6)
Reasonable rent (9,00,000 × 1/2)

4,80,000
4,50,000

Whichever is higher

4,80,000

Less: Allowable deductions

Repair and maintenance – 30% of Tk. 4,80,000
City Corporation tax(50% allowed being 50% of the house was let out and annual value was taken accordingly)
Insurance premium (50%)
Land revenue (50%)
Vacancy allowance (Tk. 30,000x2 months)
Interest on borrowed fund (5,00,000 x 13% x 8 months)

144,000
11,000
8,000
1,000
60,000
43,333

Total deductions

2,67,333

Income u/s 24

Deemed house property income u/s 19(30) note-1

Total income from house property u/s 24 & 19(30)

2,12,667

1,07,000

3,19,667

Note-1: Here actual spending for repair and collection expenses is less than the statutory limit of 30% of annual value. So the unspent amount [Tk.1,44,000 – 37,000(1/2 of 74,000)=1,07,000] will be treated as income from house property as per section19(30).

Worked example 7:

Ms. Halima Khatun owns two houses; one at Sutrapur and another at Lalbagh. From the following particulars compute her income from house property for the income year 2017-18 and also tax liability for the assessment year 2018-19.

House at Sutrapur: This is a three storied building (in each floor there are two flats). One of the flats in first floor is used as residence by Ms. Halima Khatun and the other flat in the same floor is used by her son-in-law who pays nothing for it. All other flats were let out at a monthly rent of Tk. 8,000 each. The municipal value of the house is Tk. 4,80,000. She has also received Tk. 1,00,000 as advance from the tenants which is not adjustable against rent. Expenses of the house for the year were as follows:

White wash expense	Tk 20,000
Rent collection expense	3,000
City Corporation tax, quarterly	2,400
Land revenue paid	12,000
Salary of guard, monthly	500
Loan repayment to HBFC (including interest Tk. 4,200)	42,500
Installation of generator	15,000

The owner bears the electricity and gas bill of the tenants which amounted to Tk. 30,000 for the year. One flat remains vacant for two months during the year and she claims vacancy allowance.

House at Lalbagh:

The house is let out to a private bank branch and received monthly rent of Tk. 47,500 net of TDS @ 5%. The municipal value of the house is Tk. 6,00,000. Expenses of the house for the year were as follows:

Fire insurance premium	Tk. 25,000
Municipal tax	12,000
Cost of alteration	55,000
Ground rent	10,000
Legal expenses	12,000

According to the terms of the agreement the bank has to bear service charge which amounted to Tk. 15,000 for the year. During the year, Ms. Halima Khatun incurred the following investments and expenses:

Family expenses	Tk. 3,50,000
Insurance premium:	
Own (policy value Tk. 5,00,000)	40,000
Spouse (policy value Tk. 5,00,000)	60,000
Investment in shares in secondary market	25,000
Donation to the President's relief fund	20,000
Donation to a local club	6,000
Donation to Government Zakat fund	30,000
Donation to a Mosque	10,000

Solution 7:

Ms. Halima Khatun
Income year: 2017-18
Assessment year: 2018-19
Computation of income from house property

[1] House at Sutrapur:

Annual value:

Actual rent (8000 x 4 x 12) (As 1 flat was not let out to son-in-law so there is no scope to determine annual value as per section 2(7))

3,84,000

Less: Tenant's burden paid by landlord

30,000

Revised actual rent

3,54,000

Reasonable rent (4,80,000 x 4/6)

3,20,000

Whichever is higher

3,54,000

Add: Nonadjustable advance (deemed income u/s 19(22))

1,00,000
4,54,000

Less: Allowable deductions

Repair & maintenance (3,54,000 X 25%)
City Corporation Tax (2400 x 4 x 4/6)
Land revenue paid (12000 x 4/6)
Interest paid to HBFC (4,200 x 4/6)
Vacancy allowance (8,000 x 2)

88,500
6,400
8,000
2,800
16,000

Total deductions

1,21,700

3,32,300

[2] House at Lalbagh:

Annual value:

Actual rent [Tk. 47,500 x 12]

5,70,000

Add: TDS [5,70,000 x 5/100-5]

30,000

Add: Landlord's burden paid by tenant

15,000

Actual rental value

6,15,000

Reasonable rent

6,00,000

Whichever is higher

6,15,000

Less: Allowable deductions

- 1) Repair & maintenance (615000 x 30%)
- 2) Fire Insurance premium
- 3) Municipal tax
- 4) Ground rent

1,84,500
25,000
12,000
10,000

2,31,500

3,83,500

Income u/s 24

Deemed house property income u/s 19(30) note-1

7,15,800

Total income from house property u/s 24 & 19(30)

2,53,667

9,69,467

Note-1: Here actual spending for repair and collection expenses is less than the statutory limit of 25% or 30% of annual value. So the unspent amount [Tk.88,500 +1,84,500=2,73,000-19,333(4/6th of 29,000)-0=2,53,667] will be treated as income from house property as per section19(30).

Calculation of investment allowance for tax rebate:

Actual investment:

Insurance premium

Own

40,000

Maximum limit (5,00,000 x 10%)

50,000

40,000

Spouse

60,000

Maximum limit (5,00,000 x 10%)

50,000

50,000

Donation to Government Zakat fund

30,000

Investment in shares at secondary market

25,000

Total investment

1,45,000

Maximum limit of investment allowance:

25% of Tk. 9,69,467

2,42,367

Or, Lump sum

1,50,00,000

Whichever is lower

1,45,000

Thus, allowable amount of investment allowance is -

1,45,000

Investment tax credit (1,45,000 x 15%)

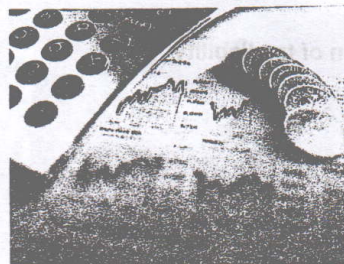
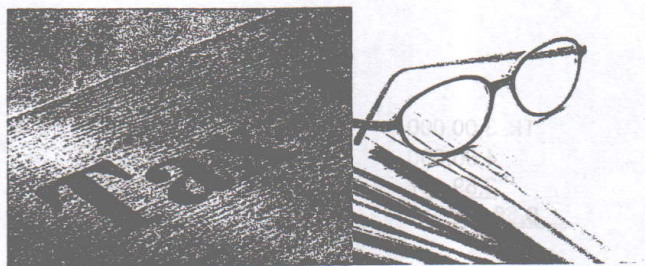
21,750

Calculation of tax liability:

		Rate	Amount (Tk.)
On the first	Tk. 3,00,000	0%	Nil
On the next	4,00,000	10%	40,000
On the balance	2,69,467	15%	40,420
Total	<u>9,69,467</u>		80,420
Less: investment tax rebate			<u>21,750</u>
			58,670
Less: TDS			<u>30,000</u>
Net tax liability			<u>28,670</u>

Self-assessment questions

- (a) Define "Annual Value" of a property under the Income Tax Ordinance, 1984.
- (b) Is the 'Annual value' of a property to be determined when it is occupied by its owner for residential purposes?
- (f) What are the allowable deductions from annual value in determining the 'Income from house property' under the Ordinance?
- (g) If any owner of the house received house rent more than Tk. 25,000 per month then what formalities to be maintained by him as per Rule-8A of I.T. Ordinance, 1984? What will happen if he does not follow the rules and instructions issued by the NBR?



Chapter 7

Agricultural income

Contents

Introduction

Examination context

Topic list

7.1	Basic principles of agricultural income
7.2	Characteristics of agricultural income
7.3	Categories of agricultural income
7.4	Non-agricultural income
7.5	Income from agricultural house property
7.6	Allowable deductions
7.7	Non-assessable agricultural income
7.8	Special tax rates

Worked examples

Introduction

Learning objectives

- Identify agricultural income.
- Compute the taxable income under the head 'agricultural income'.
- Identify different types of agricultural income.
- Identify the allowable deductions under the head.
- Illustrate the non-assessable income under the head.
- Identify the area of reduced tax rate.
- Identify partly agricultural income and partly business income.
- Compute net tax liability in different situations.

Practical significance

The head 'Agricultural income' has good potential for increasing the revenue to the Government in Bangladesh due to its significance. Bangladesh is an agricultural country and its agriculture sector has significant contribution to GDP every year. But collection of tax from this head is insignificant. Here, professional accountants can play an important role by devising the way of collecting tax under the head through simplification and modernization of tax laws and process.

This chapter presents different form of agricultural income, allowable deductions, and non-assessable income under the head, non-agricultural income, and other related topics. A clear understanding on each topics presented in the chapter will make the students expert to give opinions to their clients in tax related issues.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'income from agriculture' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

You will be also using this knowledge when you tackle the taxation paper later on in the Professional Stage and it will also underpin the technical aspects at the Advanced Stage.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define agricultural income.
- Identify different types of agricultural income.
- Compute the taxable income under the head 'agricultural income'.
- Differentiate fully, partly and other agricultural income.
- Identify the allowable deductions under the head.
- Illustrate the non-assessable income under the head.
- Know the application of reduced tax rate and areas where this tax rate is applicable.
- Define non-agricultural income and its impact on computing total income and tax liability.
- Compute net tax liability in different situations.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of agricultural income.

7.0 INCOME FROM AGRICULTURE

Section overview

- Income from agriculture is one of the important heads of income.
- The total income may not be taxable income.
- There are some allowable, inadmissible and not permissible deductions under the head.
- Some income under the head is not assessable.
- On some specific classes of income under the head is taxed at a reduced rate.
- Depreciation allowance on agricultural property is different.
- A part of the gain on sale of agricultural asset will be reported as income from agriculture.
- It is very important to know non-agricultural income and partly agricultural income.
- An assessee will enjoy Tk.2,00,000 as non-assessable income if he has income from agriculture only.
- Advance tax need not be payable on agricultural income.

7.1 Basics of agricultural income

"Agricultural income" is defined in section 2(1) of IT Ordinance 1984. Under the section, 'agricultural income' means-

(a) any income derived from any land in Bangladesh and used for agricultural purposes-

- (i) by means of agriculture; or
- (ii) by performance of any process ordinarily employed by a cultivator to render the produce marketable; or
- (iii) by the sale of the produce of the land raised by the cultivator in respect of which no process, other than that to render the produce marketable, has been performed; or
- (iv) by granting a right to any person to use the land for any period; or

(b) any income derived from any building which-

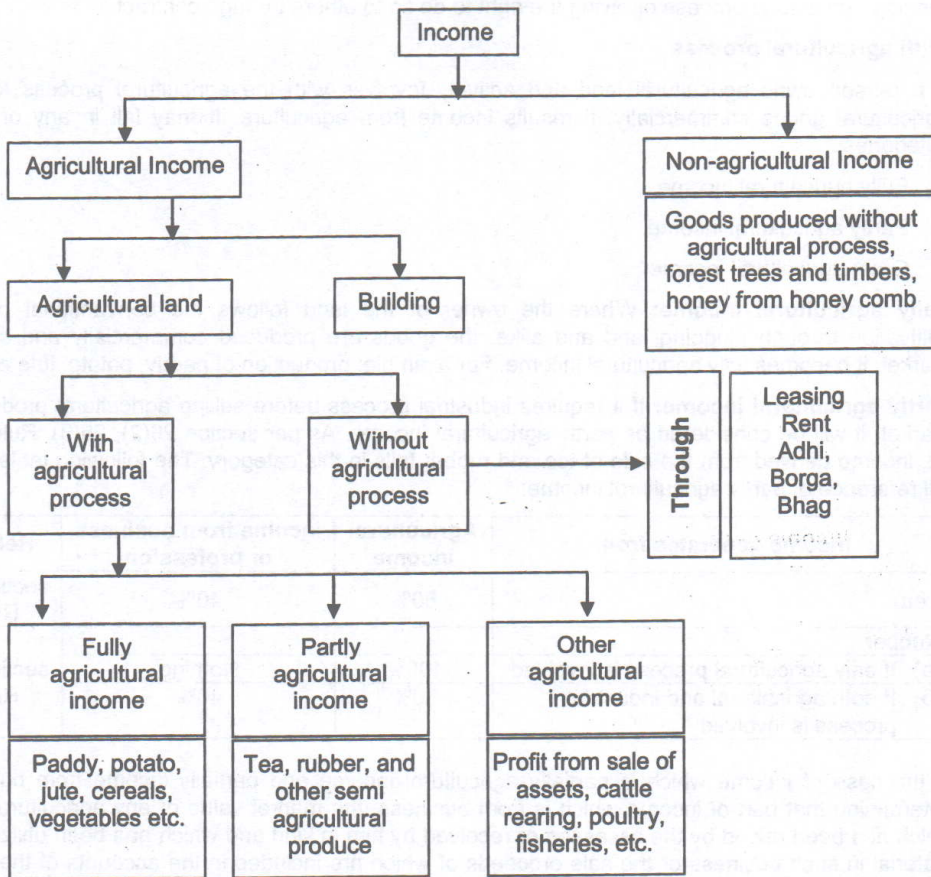
- (i) is occupied by the cultivator of any such land as is referred to in section 2(1)(a) in which any process is carried on to render marketable any such produce as aforesaid;
- (ii) is on, or in the immediate vicinity of such land; and
- (iii) is required by the cultivator as the dwelling house or store house or other out-house by reason of his connection with such land.

Scope

The following income of an assessee shall be classified and computed under the head 'agricultural income' under section 26(1), namely:-

- (a) any income derived by the assessee which comes within the meaning of 'agricultural income' as defined in section 2(1);
- (b) the excess amount (sale proceeds of any plant or machinery used exclusively for agricultural purpose in excess of the written down value) referred to in section 19(17);

- (c) the excess amount (insurance, salvage or compensation moneys received in respect of plant or machinery used exclusively for agricultural purpose which has been discarded, demolished or destroyed, in excess of the written down value) referred to in section 19(19);



7.2 Characteristics of agricultural income

- Income should be derived from land. A person may transfer his agricultural land to another in consideration of a life annuity as was in the case of *Gopal Saran Narain Singh V CIT 1935, ITR 237 (P.C)* or of other thing which is charged upon the land. The annual receipt would not be agricultural income.
- The land on which agricultural income is assessed must be situated in Bangladesh.
- The land must be used for agricultural purpose. Unless there is some measure of cultivation of the land, some expenditure of skill and labor upon it, it cannot be said to be used for agricultural purposes. Income from the sale of forest trees, bushes, bamboos, fruits and flowers growing on land naturally without any human skill and labour is not agricultural income. Income derived from the sale of wild grass or trees of spontaneous growth is not agricultural income. But land leased for grazing or pasturing animals required for agricultural purpose is used for agricultural purposes and income from lease is agricultural income irrespective of whether the grass on the land is cultivated or grown naturally.
- No advance tax is payable on agricultural income.

7.3 Categories of agricultural income

Such income may come from agricultural land or any building adjacent to agricultural land that is used for agricultural purposes. Income from agriculture may be generated from agricultural land due to running agricultural process or giving the right to do so to others through contract.

With agricultural process

If a person owns agricultural land and actively involves with the agricultural process to produce agricultural goods commercially, it results income from agriculture. It may fall in any of the three categories:

- a) Fully agricultural income
- b) Partly agricultural income
- c) Other agricultural income

Fully agricultural income: Where the owner of the land follows the conventional process of cultivation through plugging land and alike, the goods are produced commercially and sold in the market; it becomes fully agricultural income. For example: production of paddy, potato, jute, etc.

Partly agricultural income: If it requires industrial process before selling agricultural produce in the market, it will be considered as partly agricultural income. As per section 26(2), 26(3), Rules 31 and 32, income derived from the sale of tea and rubber falls in this category. The following table gives the full reference of partly agricultural income:

Income generates from	Agricultural income	Income from business or profession	Reference
Tea	60%	40%	section 26(2) Rule 31
Rubber			section 26(3) Rule 32
(a) If only agricultural process is involved	100%	Nothing	
(b) If both agricultural and industrial process is involved	60%	40%	

In the case of income which is partially agricultural income and partially income from business, in determining that part of income which is from business, the market value of any agricultural produce which has been raised by the assessee or received by him in kind and which has been utilized as raw material in such business or the sale proceeds of which are included in the accounts of the business shall be deducted and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of the produce in kind.

For the purpose, 'market value' in respect of agricultural produce, means-

- (a) where such produce is ordinarily sold in the market in its raw state or after application of any process employed by a cultivator to render it fit to be taken to the market, the value calculated according to the average price at which it has been sold during the year previous to that in which the income derived from such produce first becomes assessable; and
- (b) where such produce is not ordinarily sold in the market in its raw state, the aggregate of-
 - (i) the expenses of cultivation;
 - (ii) the land development tax or rent paid for the lands in which it was grown; and
 - (iii) such amount as the Deputy Commissioner of Taxes finds, having regard to the circumstances of each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce

In computing such income from business, an allowance shall be made in respect of-

- (a) the cost of planting bushes in replacement of bushes that have died or become permanently useless in an already planted area, unless such area has previously been abandoned:
- (b) the expenditure incurred in the income year by the assessee in connection with the development of the new areas for bringing them under tea cultivation.

Other agricultural income:

Other than the agricultural income specified above, some other income may be generated from typical agricultural process due to the expanded definition of agriculture in agricultural economics. This type of income will fall under this classification. Some of such agricultural income is exemplified below:

- (i) Income from cattle rearing
- (ii) Income from sale of palm juice and date juice
- (iii) Income from sale of seeds and grass, if grown by human effort
- (iv) Income from agricultural cooperative society which was organized for farming and cattle rearing
- (v) Income from land or assets used for processing the agricultural commodities to make them marketable
- (vi) Income from sale of herbal or medicinal plants
- (vii) Income from cultivation of flower and fruits
- (viii) Income from sale of honey if produced in agricultural land using special technologies like special box for Honey-comb.
- (ix) Income from dairy farm, provided –
 - a) assessee is the owner of the cattle
 - b) cattle are reared in cattle rearing field
 - c) milk is processed by the assessee
- (x) Income from poultry farm if they are reared in agricultural land
- (xi) Income from fisheries.

Without agricultural process

Sometimes the assessee may have income from agricultural land even without agricultural process. Some of the examples may be like;

- (i) Income from land leased for agricultural purposes
- (ii) Income from any system of sharing of crop generally known as adhi, bargā or bhag.

7.4 Non-agricultural income

Sometimes, we may be confused with some income not generated from agriculture but may be closely related to that. A possible list is given below and any income from these sources should be considered as income from other sources.

- (i) Income from ferry ghat and mooring terminal
- (ii) Income from sale of produce that grow up in the agricultural land without agricultural works e.g. forest trees, wild grass, fruit and flowers grown spontaneously and without human effort
- (iii) Income from salt production by flooding the land with sea water and then extracting salt there from
- (iv) Income from cutting and selling of timber on contract
- (v) Interest on arrear of rent for agricultural land
- (vi) Income from letting out vacant land not used for agricultural purpose
- (vii) Royalty / ground rent against lease of land for mining, potteries, quarries etc.
- (viii) Sale of soil used for brick field
- (ix) Income from sale of water used for irrigation
- (x) Income from sale of forest trees, flowers, bamboo, wild grass, reeds or fruits produced naturally without any agricultural work
- (xi) Sale of stones from quarries
- (xii) Income from salary for working as an agricultural supervisor / manager
- (xiii) Income from sale of crops which has been purchased from others for resale
- (xiv) Income from dairy firm established for business purpose

- (xv) Income from poultry firm established separately for business purpose
- (xvi) Income from fisheries established for business purpose
- (xvii) Fish hunting, ship anchor etc.
- (xviii) Income derived from butter and cheese making
- (xix) Income received as commission for working as middleman in agro products
- (xx) Remuneration received by managing agent at a fixed percentage of net profit from a company having agricultural income.
- (xxi) Interest received by an assessee against loan in the form of agricultural produce
- (xxii) Dividend paid by a company out of its agricultural income.

7.5 Income from agricultural house property

When the property is occupied by the cultivator or the recipient where any process as may be described agricultural, is carried therein by the recipient of agricultural income, or in the immediate vicinity of agricultural land, and is used as a dwelling house by the cultivator or the recipient of agricultural income, in connection with the land, any income from such house property is regarded as agricultural income. But non-agricultural income does not becomes agricultural by reason of only in direct connection with agricultural land [*Premier Construction Co. V.C.L.T. 1948 I.T.R. 380, 384*].

7.6 Allowable deductions

As per section 27 of IT Ordinance 1984, the following expenditures are admissible deductions at the time of determining income from agriculture:

- (i) any land development tax or rent paid in respect of the land used for agricultural purposes.
- (ii) any local rates or taxes paid in respect of such land.
- (iii) where the land is subject to a mortgage or other capital charge for the purposes of reclamation or improvement, the amount of any interest paid in respect of such mortgage or charge.
- (iv) any sum paid in respect of the maintenance of any irrigation or protective work or other capital assets. Such rate is given below:

Assets	Rate
1. Pucca building	10%
2. Kutchra and Pucca Building	15%
3. Kucha building	20%
4. Temporary structure	N/A*
5. Pucca walls	5%
6. Fencing of substantial material	10%
7. Tube-well	15%
8. Tanks	10%
9. Pucca irrigation channel	15%
10. Kucha irrigation channel	20%
11. Kucha irrigation wells	33.33%
12. Pucca irrigation wells	5%
13. Bullock drawn iron implements	15%
14. Bullock drawn wooden or leather implements and small other hand/implements	25%
15. Weighing machine	10%
16. Tractors and oil engines and thin implements	15%
17. Power pumping machinery	20%
18. Factor made cart of iron material with rubber tyre	15%
19. Country cart	20%
20. Steam engine	10%
21. Workshop tools	15%
22. General (machinery, implements, plants and other assets) not provided above	10%

- (vi) any sum paid as premium in order to effect any insurance against loss of, or damage to, such land or any crops to be raised or cattle to be reared thereon.
- (vii) any expenditure incurred in cultivating such land or raising livestock thereon.
- (viii) any expenditure incurred in performing any process for rendering the produce of such land fit to be taken to market.
- (ix) any expenditure incurred in transporting such produce or livestock to market.
- (x) any expenditure incurred in maintaining agricultural implements and machinery in good form and in providing for the upkeep of cattle for the purpose of such cultivation, process, or transport.
- (xi) any interest paid in respect of capital borrowed for the purpose of acquisition, reclamation and improvement of such land.
- (xii) where no books of account have been maintained in respect of agricultural income derived from land, deduction for cost of production shall be an amount equal to 60% of the market value of the produce of the land, instead of allowance as admissible under the aforesaid items (vii), (viii), (ix) and (x).
- (xiii) where the agricultural income is derived according to the local 'barga' or 'bhag' or 'adhi' system, no deduction on account of cost of production shall be admissible under this clause.
- (xiv) in respect of any machinery or plant used exclusively for agricultural purpose which has been sold, transferred by way of exchange, acquired, discarded, demolished or destroyed in the previous year, the loss on sale of such plant and machinery will also be allowed subject to certain conditions as provided for in the Ordinance.
- (xv) any other expenditure not being in the nature of capital or personal expenditure, laid out wholly and exclusively for the purpose of deriving such income from such land.

Deduction in respect of interest will not be allowed unless tax has been paid or deducted in accordance with the provisions of Chapter VII of the Ordinance.

7.7 Non-assessable agricultural income

Some mentioned income under the head is non-assessable as per different provisions of IT Ordinance and Rules. These are mentioned below:

- (1) Agricultural income is non-assessable up to Tk. 2,00,000 for an individual assessee if his only source of income is agriculture [Sixth Schedule, Part A, Para 29]. This Tk. 2,00,000 is in addition to regular non-assessable ceiling of Tk. 2,50,000 (in case of woman, elderly citizens of 65 years of old Tk. 3,00,000, for disable persons Tk. 4,00,000 and Tk.4,25,000 for gazzeted war wounded freedom fighter).

Illustration 1

Mr. Rajib reports Tk. 5,00,000 as income from agriculture during the income year ended on June 30, 2017. He has no income from other sources. In this case, Mr. Rajib will pay taxes on Tk. 50,000 only. His non-assessable income is Tk. 4,50,000 (Tk. 2,50,000 + Tk. 2,00,000). It is assumed that Mr. Rajib doesn't fall in elderly citizen or disable category.

- (2) Any income including agricultural income of an indigenous Hillman of any of the hill districts of Rangamati, Bandarban and Khagrachari, which has been derived solely from economic activities undertaken within the said hill districts [Sixth Schedule, Part A, Para 27].

7.8 Special reduced tax rates

- (a) Any income from fisheries, pelleted poultry feed, production of seeds, marketing of locally produced seeds, cattle farming, dairy farming, horticulture, frog farming, mushroom farming, floriculture, bee keeping, sericulture for the period from the first day of July, 2011 to the thirtieth day of June, 2013 will be taxed at a reduced rate of 5% [SRO 238-Law-IT/2011 dated July 06, 2011].

- (b) Tax rate on income from **fisheries, hatchery** has been further reduced from 5% to 3% effective for 2 years from the assessment year 2014-15 as per SRO no:208 dated 01/7/2013. But the reduced tax rate facility on fisheries is withdrawn in October, 2014 and again introduced through SRO no-255 dated 16/8/2015 at the following rate with effect from the assessment year 2015-16:

Income range	Reduced tax rate
Up to Tk.10,00,000	Nil
On next Tk.10,00,000	5%
On remaining income	10%

- (c) Any income from pelleted poultry feed production, seed production, marketing of locally produced seeds, and livestock farming, frog farming, horticulture, mulberry farming, sericulture, mushroom farming and floriculture will be taxed at the following reduced tax rate as per SRO no-199 dated 30/6/2015:

Income range	Reduced tax rate
On 1 st Tk.10,00,000	03%
On next Tk.20,00,000	10%
On rest amount of income	15%

- (d) Reduced tax rate with effect from the assessment year 2016-17 of **poultry** as per SRO no-254 dated 16/8/2015 is given below:

Income range	Reduced tax rate
Up to Tk.20,00,000	Nil
On next Tk.10,00,000	5%
On remaining income	10%

Some basic operations like application of human skill and labor on the land are required to constitute agriculture. Thus spontaneous growth of forest trees without the aid of any human agency is not regarded as income from agriculture.

Worked examples and solutions

Worked example 1

Relevant information regarding the agricultural income of Mr. Jamal Ahmed for the year ended on June 30, 2018 is given below:

Sale of paddy	150 maunds @ Tk. 600 per maund
Sale of jute	100 maunds @ Tk. 800 per maund
Sale of rabi crops	Tk. 65,000
Income from barga	Tk. 20,000
Lease rental of agricultural land	Tk. 30,000

Expenses relating to this income are as follows:

Cost of seeds and fertilizer	Tk. 40,000
Cultivation cost	65,000
Transportation cost	15,000
Ordinary processing cost	25,000
Land revenue paid	7,000
Crop insurance premium	5,600
Allowable depreciation	3,000
Interest on borrowed fund	2,800

Compute total income of Mr. Jamal Ahmed assuming that

- he did not maintain proper books of accounts
- he maintained necessary books of accounts

Solution 1:

- (a) When proper books of accounts are not maintained:

Mr. Jamal Ahmed
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Agricultural income (section - 26):

Sale of paddy (150 x Tk. 600)	90,000	
Sale of jute (100 x Tk. 800)	80,000	
Sale of rabi crops	65,000	
Income from barga	20,000	
Lease rental of agricultural land	<u>30,000</u>	
		2,85,000

Less: Admissible expenses:

1. Production cost (235,000 x 60%)	1,41,000	
3. Union parishad tax	4,400	
4. Crop insurance premium	5,600	
5. Allowable depreciation	3,000	
6. Interest on borrowed fund	<u>2,800</u>	
		<u>1,56,800</u>
		1,28,200
		<u>1,28,200</u>

Total income

- (b) When proper books of accounts are maintained:

Mr. Jamal Ahmed
Income year: 2017-18 [Assessment year: 2018-19]
Computation of total income

Agricultural income (section - 26):

Income from sale of paddy (150 x 600)	90,000	
Income from sale of jute (100 x 800)	80,000	
Income from sale of rabi crops	65,000	
Income from Barga	20,000	
Lease of agricultural land	<u>30,000</u>	
		2,85,000

Less: Admissible expenses:

1. Production cost-		
Cost of seeds and fertilizer	40,000	
Cultivation costs	65,000	
Transportation cost	15,000	
Ordinary processing cost	<u>25,000</u>	
	1,45,000	
2. Land revenue paid	7,000	
4. Crop insurance premium	5,600	
5. Allowable depreciation	3,000	
6. Interest on borrowed fund	<u>2,800</u>	
		<u>1,63,400</u>
		1,21,600
		<u>1,21,600</u>

Total income

Worked example 2

Mr. Sanjib Majumder is a farmer who owns agricultural land which is used three times a year to produce agricultural goods. Such cultivation is mainly done for commercial purpose; however, a very insignificant part is consumed by him. He is an elderly citizen (age more than 65 years) and has reported income from no other sources. During the income year ended on June 30, 2018, he has reported following information relating to income from agriculture:

Agricultural produce	Volume of production	Self-consumption	Market price
Paddy	215 maunds	15 maunds	Tk. 700 per maund
Potato	112 maunds	12 maunds	Tk. 180 per maund
Cereals	835 kgs	35 kgs	Tk. 115 per kg

In addition to above income, he also produced seasonal vegetables (beans) during winter on the surroundings of his agricultural land. Total production was 256 kgs and sold at the rate of Tk. 16. Out of the total production, 16 kgs are used for self-consumption and reported Tk. 1,200 as cost of bean production.

He also has reported Tk. 95,000 income from poultry firm and fulfills all conditions to be non-assessable. He has also reported Tk. 180,000 income from fisheries.

Expenses relating to agricultural produce like paddy, potato and cereals are as follows:

Cost of seeds and fertilizer	Tk. 36,500	
Labour charge		40,000
Maintenance costs of agricultural equipment	4,000	
Union parishad tax		5,800
Crop insurance premium		8,200
Depreciation on tractor @ 20%	14,000	

Mr. Majumder has borrowed Tk. 50,000 from Rajshahi Krisi Unnayon Bank at an interest rate of 12% per annum on 15th October 2017. Allowable depreciation for tractor as per the Third Schedule of the ITO, 1984 is 15%. Cost of seeds and fertilizer includes Tk. 1,500 spent against Barga. He maintains books of accounts properly.

Solution 2:

Mr. Sanjib Mojumder
Income year: 2017-18
[Assessment year: 2018-19]
Computation of total income

Agricultural income (section - 26):

Market price of paddy production (215 x 700) [note-1]		1,50,500	
Market price of potato (112 x 180)		20,160	
Market price of cereals (835 x 115)		96,025	
Market price of seasonal vegetables (256 x 16)		4,096	2,70,781
Income from poultry farm	95,000		
Less: exempted upto Tk. 20,00,000	<u>95,000</u>		nil
Income from fisheries	Tk. 1,80,000		
Less: exempted upto Tk. 10,00,000	<u>1,80,000</u>		nil
Less: Admissible expenses: (section-27)			
1. Production cost-			
Cost of seeds and fertilizer	36,500		
Labour charge	40,000		
Maintenance of agricultural equipment	<u>4,000</u>		
		80,500	

2. Union parishad tax	5,800	
3. Crop insurance premium	8,200	
4. Allowable depreciation (note 2)	10,500	
5. Interest on borrowed fund (note-3)	4,250	
6. Cost of bean production	1,200	
		1,10,450
Total		1,60,331
Less: exemption as per 6 th schedule, part-A, Para 29 (up to 2,00,000)		2,00,000
Total income		<u>-39,669</u>

Notes:

1. Market price of the produce is to be taken as sales proceeds as per proviso of section 26. So self-consumption has not been taken into consideration, rather whole produce has been multiplied by market price to arrive sale proceeds.
2. Allowable depreciation = $(14,000/20) \times .15 = 10,500$
3. Interest on borrowed fund = $(50,000 \times 12\%) \times 8.5/12 = 4,250$
4. As agriculture is the only source of income for Mr. Sanjib Majumder, he is allowed to get maximum Tk. 2,00,000 exemption as per 6th schedule, part-A, Para 29 in assessing his total income.
5. As total income of Mr. Sanjib Majumder doesn't exceed the non-assessable limit of Tk. 3,00,000; he will have no tax liability.

Worked example 3

From the following particulars of income, compute the total income Mr. Jibon Karmaker for the income year 2016 -17.

1. Sale of paddy:	250 maunds @ Tk. 500 per maund	Tk. 125,000
2. Sale of jute:	100 maunds @ Tk. 400 per maund	40,000
3. Sale of rabi crops:		50,000
4. Annual lease rental from leasing agricultural land		20,000
5. Sale of forest timber and bamboo		6,000
6. Income from tea garden		30,000
7. Income from rubber garden		40,000
8. Income from tobacco industry		30,000
9. Income from sugar industry		50,000
10. Income from poultry farm		35,000
11. Income from cattle rearing		3,000
12. Income from sale of palm and date Juice		6,000
13. Income from sale of honey		5,000

Expenses for cultivation are as follows:

	Rice and rabi crops	Jute
Cost of seeds and fertilizer	Tk. 25,000	Tk. 7,000
Labor charge	5,000	2,000
Cost of hiring pump machine	3,000	1,000
Repair expense of equipments	500	
Transportation cost	2,000	500

Mr. Karmaker maintains proper books of accounts for rice and rabi crops, however, he maintains no books for jute.

Other expenses as incurred were as follows:

Union parishad tax	Tk. 2,000
Land revenue	1,000
Crop insurance premium	2,500
Allowable depreciation	9,000
Maintenance cost of irrigation plant	4,000
Insurance premium - Tractor	7,000

He had a pump machine which was purchased at Tk. 25,000. It has become obsolete and has been discarded at Tk.12,000. As on the date of discard, the written down value after charging depreciation on the basis of prescribed rate at the ITO, 1984 amounted to Tk. 10,000.

He has taken agricultural loan of Tk. 50,000 @ 8% interest from Bangladesh Krishi Bank.

Mr. Karmaker has a tractor which was purchased for Tk. 250,000 on which he has an active insurance policy. During the income year, the tractor becomes out of order and he filed a claim with insurance company. After proper scrutiny, he receives Tk. 82,000 from insurance company as coverage. However, depreciation charged so far on the tractor as per IT Ordinance is Tk. 150,000.

Solution 3:

Mr. Jibon Karmaker
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Agricultural income (section - 26):

Sale of rice (250 x 600)	1,25,000	
Sale of jute (100 x 400)	40,000	
Sale of rabi crops	50,000	
Annual lease rental	20,000	
Income from tea garden (30,000 x 60%)	18,000	
Income from rubber garden (40,000 x 60%)	24,000	
Income from poultry farm	35,000	
(-) exemption (full)	<u>35,000</u>	
Income from cattle rearing	3,000	
Income from sale of palm and date juice.	6,000	
Income from sale of honey	5,000	
Gain from sale of obsolete equipment (sales - WDV = 12,000 - 10,000)	2,000	
		2,93,000

Less: admissible expenses

1. Production expenses:		
Cost of seeds & fertilizer	25,000	
Labor charge	5,000	
Cost of pump machine hire	3,000	
Repair expenses of agricultural equip:	500	
Transportation cost	2,000	
Production costs for rice & rabi crops	35,500	
Costs of jute production (40,000 x 60%)	<u>24,000</u>	
		95,000
2. Union parishad Tax	2,000	
3. Land revenue	1,000	
4. Crop insurance premium	2,500	
5. Allowable depreciation	9,000	

6.	Maintenance cost of irrigating plant	4,000	
7.	Insurance premium – Tractor	7,000	
8.	Loss from tractor (Tk. 100,000 – Tk. 82,000)	18,000	
8.	Interest from borrowed fund (50,000 x 8%)	<u>4,000</u>	<u>47,500</u>
			<u>1,42,500</u>
			1,50,500

Income from business or profession:

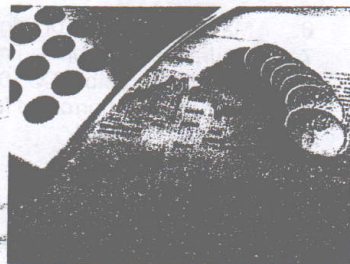
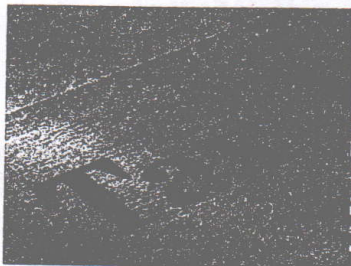
Income from tea garden (30,000 x 40%)	12,000	
Income from rubber garden (40,000 x 40%)	16,000	
Income from tobacco (direct 45% tax will be imposed)	30,000	
Income from sugar industry	<u>50,000</u>	
(Fully business income as NBR not yet prescribed any ratio)		1,08,000

Income from other sources

Sale of forest timber and bamboo	6,000
Total income	<u>2,64,500</u>

Self-assessment questions

1. Define 'agricultural income' under the Income Tax Ordinance 1984.
2. Discuss the allowable deductions as per section 27 of the Ordinance in computing the taxable income under the head 'agricultural income'.
3. How will you compute the income in respect of tea and rubber industries?
4. What are the different types of agricultural income?
5. On what categories of agricultural income, taxes are imposed at a reduced rate?



Chapter 8

Income from business or profession

Contents

Introduction

Examination context

Topic list

8.1	Meaning of business and profession
8.2	Scope of income under the head 'income from business and profession'
8.3	Some specific guidelines
8.4	Allowable deductions
8.5	Deduction not admissible in certain circumstances
8.6	Capital and revenue expenditure
8.7	Illustrations of some important concepts

Worked examples and solutions

Introduction

Learning objectives

- Identify income from business and profession.
- Compute the taxable income under the head 'income from business and profession'.
- Identify the allowable deductions under the head.
- Identify the expenses that are inadmissible.
- Identify the complexity of computing income from business and profession.
- Identify the expenses admissible up to a certain limit.
- Compute net tax liability in different situations.

Practical significance

The head 'Income from business and profession' is very important to taxing authority. A significant part of tax revenue government collects from this head. This head also includes lot of complex issues on which clear understanding is required to practice tax. This chapter lays the basic foundation of corporate tax assessment.

This chapter presents an idea of how conventional profit and loss account can be adjusted with applicable tax laws. It presents the scope of income under the head, admissible expenses, inadmissible expenses and other related issues.

Some expenses are admissible up to a certain limit. These are explained with some examples. Other complex issues like perquisites, balancing charge etc. are simplified with examples.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think

Do you realize that the computation of taxable income under the head 'income from business and profession' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define income from business and profession.
- Identify different scope of income under the head.
- Compute the taxable income under the head 'income from business and profession.
- Illustrate the income cannot be reported under the head.
- Identify the allowable deductions under the head.
- Illustrate the expenses admissible up to a certain limit.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income from business and profession.

8.0 INCOME FROM BUSINESS AND PROFESSION

Section overview

- ➔ Scope of income from business and profession.
- ➔ The gross income may not be taxable income.
- ➔ There are some allowable, inadmissible and not permissible deductions under the head.
- ➔ Computation of income under the head is very significance.
- ➔ Any amount of perquisites, entertainment allowance, and free sample are admissible but up to a certain ceiling.
- ➔ Depreciation allowance is very important factor for determining profit.
- ➔ Revenue expenditure and capital expenditure is considered differently.

8.1 Meaning of business and profession

"Business" defined in section – 2(14) as including any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture.

According to Oxford Advanced learner's Dictionary, business means the activity of making, buying, selling or supplying goods or services for money.

Section 2(49) defines a profession as - 'profession includes a vocation'. Profession involves the idea of an occupation using intellectual skill, or any manual skill as distinguished from an operation which is substantially the production or sale arrangements for the production or sale of commodities. Following are the characteristics of a profession:

- a. mastering of particular intellectual skill acquired through rigorous education and training;
- b. adherence to common code of conduct or professional ethics;
- c. acceptance of a social duty of due care and service.

Profession is therefore, a broader term different from a vocation, trade or commerce. The characteristics mentioned above are absolutely essential to call any activity as professional which may not be so rigorously required in a vocation, occupation or trade. Further in a profession mental and intellectual contents are much higher than mechanical skill required in a vocation or occupation.

8.2 Scope of income under the head 'income from business and profession'

Scope of income under the head 'income from business and profession' encompasses the following areas as per different sections of IT Ordinance, 1984:

(a) Fully income from business or profession	
section 28(1)(a)	profits and gains of any business or profession carried on by the assessee
section 28(1)(b)	income derived from any trade or professional association or other association of like nature
section 28(1)(c)	value of any benefit or perquisite arising from business or the exercise of a profession
section 28(1)(d) & 19(15)	receipt of any loss, bad debt or expenditure already charged; unpaid amount of interest or share of profit to certain banks after three years of charge; benefit derived in respect of trading liability that remains unpaid for three years
section 28(1)(e) & 19(16)	income from the disposal of any building, machinery or plant used for purpose of any business or profession carried on by him

section 28(1)(f) & 19(18)	income from any insurance, salvage or compensation moneys received in respect of any building, machinery or plant used for the purpose of business or profession
section 28(1)(g) & 19(20)	Income from the disposal of an asset representing expenditure of a capital nature on scientific research
section 28(1)(h) & 19(23)	Income from the transfer of export quota by an assessee being an exporter of garments
(b) Partly income from business or profession	
section 26(2) & Rule 31	Income from the sale of tea
section 26(3) & Rule 32	Income from the sale of rubber.

8.3 Some specific guidelines

In line with section 28(2) some typical companies should compute taxable income as per the guidelines given in different schedules as mentioned below:

Fourth Schedule	The profits and gains from insurance business and the tax payable thereon
Fifth Schedule – Part A	The profits and gains from the exploration and production of petroleum (including natural gas) and the tax payable thereon
Fifth Schedule – Part B	The profits and gains of any business which consists of or includes the exploration and extraction of such mineral deposits of wasting nature, not being petroleum and natural gas, as may be specified

The amount of interest which is not brought in the profit and loss account and kept in suspense account relating to classified bad and doubtful debts of BDBL, ICB, any financial institution and any commercial bank including the Bangladesh Krishi Bank and the Rajshahi Krishi Unnayan Bank shall be chargeable to tax in the income year in which it is credited to the profit and loss account for that year or as the case may be, it is actually received, whichever is earlier [section 28(3)].

8.4 Allowable deductions

The expenditures which are deductible in determining income from business or profession have not been enumerated exhaustively. A few heads of allowable expenditures have been specified under section 29(1) but many other expenses can be claimed to be admissible under section 29(1) (xxvii) which is generally known as "omnibus" clause.

The allowable deductions which have been specifically mentioned in section 29(1) are mentioned below:

- (i) Rent of the premises used for the purpose of business/profession [section 29(1) (i)].
Provided that if a substantial part of the premises is used by the assessee as a dwelling house, the amount shall be a proportionate part of the rent having regard to the proportionate annual value of the part so used.
- (ii) Repairs to hired business premises if the assessee bears the expense [section 29(1) (ii)].
Provided that if a substantial part of the premises is used by the assessee as a dwelling house, the amount shall be a proportionate part of the sum paid for such repair having regard to the proportionate annual value of the part so used.
- (iii) Bank interest paid or any profit shared with a bank run on Islamic principles in respect of capital borrowed for the purpose of business or profession [sec. 29(1) (iii)].
Provided that if any part of such capital relates to replenishing the cash or to any other asset transferred to any other entity, when lending of money is not the business of transferor, the amount shall be proportionate part of the interest so paid or the profit so shared having regard to the proportion of such capital so used.

- (iv) Share of profit paid by a bank run on Islamic principles [section 29(1) (iv)].
- (v) An amount not exceeding 5% of the profit transferred to Special Reserve by banks and financial institutions approved by the Government [section 29(1) (v)].
- (vi) Repairs to own buildings, plants, machinery, furniture or other fixed assets [section 29(1) (vi)].
- (vii) Insurance premium for insurance against risk of damage etc. of buildings, plant, furniture or other fixed assets used in business or profession [section 29(1) (vii)].
- (viii) Depreciation of building, machinery, plant or furniture being owned by the assessee and used for business or profession as per Third Schedule [section 29(1) (viii)].
- (ix) Investment allowance for a passenger vessel or a fishing trawler which is entitled to special depreciation is allowable @ 20% of the original cost subject to some conditions [section 29(1) (ix)].
- (x) Where any building, machinery, plant or any other fixed asset not being imported software which, after having been used by the assessee for the purpose of his business, has been discarded, demolished or destroyed in any income year or any such asset has been sold, transferred by way of exchange or compulsorily acquired by a legally competent authority or exported outside Bangladesh in any income year, an obsolescence allowance to the extent and computed in the manner specified in paragraph 10 of the Third Schedule [section 29(1) (xi)].
- (xi) Obsolescence allowance and allowance on account of death or useless animals used for the purpose of business or profession otherwise than as stock in trade [section 29(1) (xii)].
- (xii) Land development tax or rent, local rates or municipal tax [section 29(1) (xiii)].
- (xiii) Bonus paid to employees including festival bonus [section 29(1) (xiv)].
- (xiv) The amount of bad debt which is established to have become irrecoverable, under the stated circumstances [section 29(1) (xv)].
- (xv) The amount of bad debt written off as irrecoverable but deduction not allowed on the ground that it was not then irrecoverable, the amount which was established to be irrecoverable [section 29(1) (xvi)].
- (xvi) The amount of bad debt having been irrecoverable in an earlier year is allowable for the earlier year under certain circumstances and with the consent of the assessee [section 29(1) (xvii)].
- (xvii) In respect of provision for bad and doubtful debt made by BDBL for overdue loan, a sum equal to five percent of such overdue loan or the amount of actual provision for such bad or doubtful debt in the books of the assessee, whichever is the less [section 29(1) (xviii)].

Provided that the deduction shall be allowed only in respect of the assessment years 1987-99, 1988-89 and 1990-91.

Provided further that if any amount out of the amount so allowed is ultimately recovered, the same shall be deemed to be a profit of the year in which it is recovered.

- (xviii) Provision for bad and doubtful debt and interest thereon made by a commercial bank including the Bangladesh Krishi Bank and the Rajshahi Krishi Unnayan Bank of a sum equal to 1% of the outstanding loan including interest thereon or the amount of actual provision, whichever is less, subject to the specified conditions [section 29(1)(xviii)].

Provided that the deduction shall be allowed only in respect of the assessment years 1990-91 to 2006-2007.

Provided that, the provision of this clause shall apply only in respect of loan which the Bangladesh Bank has classified as bad and doubtful debts.

If any amount out of the provision for bad and doubtful debt and interest thereon which has been allowed is ultimately recovered, the amount so recovered shall be deemed to be profit of the year in which it is recovered.

Provided that no deduction under this clause shall be allowed in respect of -

- a) Any amount representing grant allowed by the Government in the form of 15-Year Special Treasury Bonds.
- b) Any loan advanced to any Government Organization or Body Corporate or any other loan guaranteed by the Government.
- c) Any debt representing loans advanced to any director of the bank, his nominees or dependents.
- (xix) Any expenditure, not being capital expenditure, laid out or expended on scientific research related to the business [section 29(1) (xix)].
- (xx) Any expenditure of a capital nature laid out or expended on scientific research related to the business subject to the stipulated conditions [section 29(1) (xx)].
- (xxi) Any sum paid to scientific research institute or other specified bodies carrying out scientific research approved by the Board subject to the stipulated conditions [section 29(1) (xxi)].
- (xxii) Any sum, not being of capital nature laid out or expended on any educational institute or hospital established for the benefit of employees subject to the stipulated condition [section 29(1) (xxii)].
- (xxiii) Expenditure (including capital expenditure incurred on any educational institution or hospital for the benefit of employees and their dependents is deductible provided no charge is made for the services rendered by such hospital or institution. Expenditure incurred on the construction, maintenance or running of any institute for the training of industrial workers will be similarly deductible [section 29(1) (xxiii)].
- (xxiv) Any expenditure laid out or expended on the training of citizens of Bangladesh in connection with a scheme approved by the National Board of Revenue [section 29(1) (xxiv)].
- (xxv) Expenses incurred in connection with visits abroad in a Trade Delegation sponsored by the Government [section 29(1) (xxv)].
- (xxvi) Subscriptions paid to registered trade organizations. Annual membership subscription paid to registered trade organization or to a recognized professional institution is allowable expenditure for the purpose of computation of income from business [section 29(1) (xxvi)].
- (xxvii) Any expenditure, not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of the business or profession of the assessee [section 29(1)(xxvii)].

Allowable deductions proportionately

Where any premises, building, machinery, plant or furniture is not wholly used for business or profession, any deduction allowable under section 29(2) will be allowed proportionately.

8.5 Deduction not admissible

The following expenditures are not admissible deductions in the determination of income from business or profession under the circumstances as stated against each item:

- i) Payment of salary, if tax has not been deducted at source u/s 50[sec. 30(a)].
- ii) Any payment wherefrom tax is deductible but not deducted [sec. 30(aa)].
- iii) Any payment by way of salary if the employee required to obtain 12 digits TIN but fails to obtain the same at the time of making such payments. [sec. 30(aaa)].
- iv) Any payment made by way of salary to an employee for whom the statement under section 108A ("Information regarding filing of return by employees") was not provided.[sec.30(aaaa)]
- v) Payment of salary, remuneration, interest or commission to any partner [sec. 30(b)].
- vi) Payment of brokerage or commission to a non-resident without deduction of tax at source violating section 56 [sec.30(c)]
- vii) Payment to employees' provident fund or other funds unless effective arrangement has been made for deduction of tax at source while making the payments from the fund which are taxable under the head 'Salaries [sec. 30(d)].

- viii) Payment of perquisites to an employee in excess of Tk.5,50,000 and to any employee who is a person with disability, as exceeds Tk.25,00,000.[sec. 30(e)].
- ix) Expenditure on foreign travels of employees and their dependents, spouse and minor children (including step and adopted children) for holidaying and recreation exceeding 3 months basic salary or 3/4th of actual expenditure whichever is less and such foreign travels shall not be oftener than once in every 2 years.[sec. 30(f) (ii) read with Rule 65A].
- x) Distribution of free sample exceeding the following limit[sec. 30(f)(iv) + Rule 65C]:

Assessed turnover	% of turnover		
	Pharmaceutical industry	Food, cosmetics and toiletries	Other industry
Up to Tk. 5 crore	2%	1%	0.50%
Exceeding Tk. 5 crore, but up to Tk. 10 crore	1%	0.5%	0.25%
Exceeding Tk. 10 crore	0.50%	0.25%	0.10%

- xi) Entertainment expenditure exceeding the following limits [sec. 30(f)(i) + Rule 65]:

Assessed income	Limit
On 1st Tk. 10 lac	4%
On the remaining income	2%

- xii) Head Office Expenditure or intra-group expense, called by whatever name of foreign company exceeding 10% of disclosed net profit [sec. 30(g)].
- xiii) Royalty, technical services fee, technical know-how fee or technical assistance fee or any fee of similar nature, as exceeds the following: [sec. 30(h)].

Period	% of disclosed net profit
For the first 3 income years from the commencement of the business or profession	10%
For subsequent income years	8%

- xiv) Salary or remuneration paid by the employer otherwise than by crossed cheque or bank transfer having gross monthly salary of Tk. 15,000/- or more [sec. 30(i)].
- xv) Incentive bonus exceeding 10% of disclosed net profit [sec. 30(j)].
- xvi) Overseas traveling exceeding 1.25% of disclosed turnover. Provided that the ceiling will not apply to the overseas travelling expenses by an assessee engaged in providing any service to the Govt. where overseas travelling is a key requirement of that service. [Sec. 30(k)].
- xvii) Any commission/discount paid by any company to its shareholder director [sec. 30(l)].
- xviii) Any cash payment above Tk.50,000 other than crossed cheque or bank transfer except [sec. 30(m)]
 1. Payment for purchase of raw materials
 2. Salary of employees where monthly salary payment was otherwise restricted
 3. Any payment for government obligation.
- xix) Any payment on account of house rent if it is not paid through crossed cheque or bank transfer. [sec. 30(n)]
- xx) The following payment to a person who does not hold a 12 digit TIN
 1. Agency/distributorship commission
 2. Commission/fee/any other sum in relation to money transfer through mobile banking or other electronic means or in relation to charge of mobile phone account.
 3. Advisory/consultancy/catering/event management/manpower supply/security service [sec. 30(o)].

8.6 Capital and revenue expenditure

Capital expenditure

All expenditure incurred in acquisition of an asset of a permanent nature which is held for the purpose of carrying on business, such as land, building, plant, furniture etc. is called capital expenditure. Such expenditure retains a permanent value of the business except for the wear and tear which the assets undergo on account of their use. If an amount is expended on an existing asset, its value is increased. It will be regarded as capital expenditure. Expenditure incurred in obtaining a license to secure an agency will be a capital one though the agency might not have become secured. Any expenditure incurred for the following purposes will be capital expenditure:

- (1) For acquiring fixed assets, e.g. land, building, machinery, furniture etc. held for use in the business. The cost of a fixed assets will include all expenses incurred up to the time the assets become ready for use, e.g. legal charges, broker's charges, freight, import duty, clearing, carriage, cartage and erection charges;
- (2) For retaining capital assets;
- (3) For improvement and extension of fixed assets, cost of making additions to building, machinery, plant and furniture etc. and other improvements of assets;
- (4) For increasing in any way the profit earning capacity of a business, e.g. the cost of shifting the business to better and more suitable premises;
- (5) For raising money for capital purposes, e.g. brokerage and commission paid for procuring loans;
- (6) Cost of constructing a factory or installing machinery;
- (7) Cost of equipment and apparatus;
- (8) Cost of machinery, plant and furniture;
- (9) Expenses incurred in connection with the erection of buildings and plants;
- (10) Amount spent on the construction of reservoir;
- (11) Expenditure incurred on improvements to property, as distinguished from mere repairs;
- (12) Expenditure incurred in respect of reconstruction of business premises or converting the same from one type to another;
- (13) Price paid for the purchases of copyright or patent right.

Revenue expenditure

All expenditure incurred in buying goods for resale or converting raw materials to manufactured articles or incidental to the conduct and financing of the business, is treated as revenue expenditure. Cost of goods purchased for the business in which a person deals, sums paid as rent, salaries and wages, repairs etc. are instances of revenue expenditure. Expenditure incurred for any of the following purposes will be regarded as revenue expenditure:

- (1) For purchasing assets with a view to re-selling them at profit or manufacturing them in a saleable condition, e.g. goods, raw materials and stores;
- (2) For maintaining capital assets in good working order, e.g. repairs and renewals of buildings;
- (3) For meeting day-to-day expenses of carrying on a business, e.g. salaries, wages, rents etc.

Tests for determining an expenditure as either capital or revenue nature

If the money comes from circulating capital, it will be revenue expenditure; if it emanates from fixed capital, it will be capital expenditure.

If the answer to any of the following questions is in the affirmative, it is a capital expenditure, otherwise it is revenue expenditure:

- (a) Does the expenditure result in the acquisition or retention of a capital asset?
- (b) Is there an addition or improvement to fixed assets?
- (c) Has it in any way improved income-generating capacity of the business?
- (d) Has it been incurred to raise any capital sum for business?

The following expenses which, prima facie, are of a revenue nature, become capital under certain circumstances as under:

- (1) Raw materials and stores when utilized in making a fixed asset;
- (2) Wages and salaries when paid in connection with the installation or construction of a fixed asset. Thus, when a company manufactures a machine for its own use, the wages and salaries of persons employed on the work will be capital expenditure;
- (3) Carriage and freight expenses incurred in connection with the acquisition of fixed assets;
- (4) Cost of repairs incurred in putting a second hand fixed assets into a proper operational state;
- (5) Legal charges incurred in connection with the acquisition of fixed assets, e.g. building, machinery, plant etc. and expenses incurred in clearing encumbrances thereon.

A particular item of expenditure may be of both capital and revenue nature, e.g., the combined cost of repairs, renewals etc. The amount should be apportioned after deciding how much of the total expenditure represents cost of improvements or additions etc. and how much of it is in the nature of pure repairs.

The following types of expenditure have been held to be capital expenditure:

- (1) Preliminary expenses incurred for floating or acquiring a business;
- (2) Expenses incurred for raising of capital;
- (3) Cost of shifting business from one place to another with a view to increasing its revenue-earning capacity;
- (4) Lump sum payments made to retiring directors of a company in order to restrain them from entering into competition with the business of the company.

8.7 Illustrations of some important concepts

Balancing charge

Balancing charge is the revenue gain earned by a business at the time of disposal of any building, machinery and plant used for the purpose of business or profession. Total gain on disposal is the difference between sale proceeds and written down value (WDV) of the asset. If the sale proceed is higher than the original cost, it results capital gain. And balancing charge results once capital gain is deducted from total gain. At different amount of sale proceeds applied on same asset, different concept is exemplified below:

XYZ Company owns an asset originally purchased for Tk. 100,000. The company recently disposes the asset when written down value of the asset amounts to Tk. 56,000. Assuming different sale proceeds, the concepts are presented below:

Sale proceeds	Total gain (Sale proceeds - WDV)	Capital gains (Sale proceeds - cost)	Revenue gain (Total gain - Capital gains)	Revenue loss (WDV - Sale proceeds)
(a) 120,000	64,000	20,000	44,000	nil
(b) 90,000	34,000	nil	34,000	nil
(c) 50,000	nil	nil	nil	6,000

Compensation received from insurance company

When any building, machineries or plant used for the purpose of business or profession is demolished, destroyed or discarded and insurance compensation is received, amount equal to balancing charges is reported as income from business or profession. The application is similar to balancing charge, the only difference is that the asset is not disposed rather destroyed and thus the amount is received from insurance company as compensation money.

Let's assume the same asset. The asset is now destroyed and there is an active policy covering the risk of the asset. And the company lodged claim with different amount of compensation money received as shown below:

Compensation received	Total gain (Compensation received - WDV)	Capital gain (Compensation received - cost)	Revenue gain (Total gain - Capital gains)	Revenue loss (WDV - Compensation received)
(a) 130,000	74,000	30,000	44,000	nil
(b) 100,000	44,000	nil	44,000	nil
(c) 40,000	nil	nil	nil	16,000

Fractional income in certain cases (transfer of garments' export quota, tea, rubber)

In certain cases, income from business or profession is assessed as a certain percentage of total income. These are:

- 3% of the export value of the garments exportable against the export quota in case the export quota is transferred to other (Rule 30A)
- 40% of the income derived from the sale of tea grown and manufactured by the seller in Bangladesh (Rule 31)
- 40% of the income derived from the sale of rubber grown and manufactured by the seller in Bangladesh (Rule 32)

Let's assume that XYZ Company has income from the following sources as mentioned below:

- The company has transferred a part of its export quota of garments to another company that may generate a total of Tk. 1,500,000 export value.
- Income derived from the sale of tea grown and manufactured by the company, Tk. 500,000.
- Income derived from the sale of rubber grown and manufactured by the company, Tk. 300,000.

Sources	Computation	Income from business
From transfer of export quota	3% of Tk. 1,500,000	45,000
From sale of tea	40% of Tk. 500,000	2,00,000
From sale of rubber	40% of Tk. 300,000	1,20,000
Total income from business		Tk. 3,65,000

Entertainment expenses

Any amount representing entertainment expense is not allowed for deductions. For allowable deductions under the head, the following bases and percentages are prescribed in Rule 65.

Income, profits and gains of the business and profession (before charging such allowance)	Allowable rate
On the first Tk. 10 lakh of profit	4%
On the balance / rest of the profit	2%

For example, XYZ Company reports Tk. 89,00,000 as profit for the year ended June 30, 2018 after charging Tk. 1,50,000 as entertainment allowance. Compute the amount of allowable entertainment expense.

On first profit of Tk. 1,000,000	@ 4%	Tk. 40,000
On balance of Tk. (89,00,000+1,50,000-10,00,000) 80,50,000	@ 2%	1,61,000
On total profit Tk. 9,050,000 (before charging entertainment expense)		2,01,000

Thus, allowable amount of entertainment expense is Tk. 2,01,000 but as the claim is lower so entertainment will be allowed Tk. 1,50,000/-

Foreign travel allowance of employees

Foreign travels for holidaying and recreation of an employee and his dependents for once in every two years to the extent of 3 months basic salary or three-fourths of the actual expenditure, whichever is less, shall be admissible. But in this regard, payment exceeding Tk.10,000 shall not be allowed as a deduction unless such payment is made by a crossed cheque on a bank transfer (Rule 65A).

Consider the following information to compute the allowable amount of foreign travel allowance for Mr. X who has joined the company during the year and availing the benefit for the first time.

Basic salary of Mr. X Tk. 60,000

Actual expenditure Tk.200,000

Such payments are made through crossed cheque.

Allowable amount of foreign travel expense:

3 months basic salary @ Tk. 60,000 Tk. 180,000

3/4th of actual expenditure Tk. 150,000

Whichever is less Tk. 150,000

Thus, Tk. 200,000 is not allowable rather Tk. 150,000 will be allowable expense.

Free sample distribution

Expenditure on distribution of free sample is admissible up to the percentage as given below (Rule 65C):

Ceiling of turnover	In respect of pharmaceutical industries
(a) Turnover up to Taka 5 crore	2 %
(b) Turnover in excess of TK. 5 crore but up to TK. 10 crore	1 %
(c) Turnover in excess of Taka 10 crore	0.50%

For example, let's assume that the turnover of XYZ pharmaceutical Company is given in the table below. The allowable deduction for free sample distribution would be:

Turnover	Pharmaceutical industry	
	Rate	Amount (Tk.)
a) If turnover is Tk. 5,00,00,000	2%	10,00,000
b) If turnover is Tk. 10,00,00,000	2% + 1%	15,00,000
c) If turnover is Tk. 12,00,00,000	2%+1%+ 0.50%	16,00,000

Perquisites

Perquisite to any employee for any year is allowed up to Tk. 5,50,000. If actual perquisite given to an employee exceeds Tk. 5,50,000; such amount exceeding Tk. 5,50,000 will be disallowed [(Section 30(e)). For example, let's assume that Mr. X enjoys the following benefits during the income year ended on 30th June, 2018 from his employer:

1.	Basic salary	Tk. 504,000
2.	House rent allowance	400,000
3.	Festival bonus –equal the two months basic salary	84,000
4.	Leave encashment	42,000
5.	Conveyance allowance	1,05,000
6.	Contribution to Recognized Provident Fund @ 10%	50,400
7.	Servants wages	20,000
8.	Children educational allowance	50,000
9.	Leave fare assistance	40,000
10.	Bungalow utilities	25,000

Compute the amount of perquisites to be disallowed.

Actual perquisites received

1.	House rent allowance	Tk. 400,000
2.	Conveyance allowance	1,05,000
3.	Servants wages	20,000
4.	Children educational allowance	50,000
5.	Bungalow utilities	25,000
	Value of perquisites received	6,00,000
	Allowable perquisites	5,50,000
	Excess perquisites to be disallowed	50,000

Expenses allowed up to a certain percentage

It is important to remember that some expenses, where there is a scope of reporting higher amount, are permitted but up to certain limit. Amount exceeding that limit is not allowed and thus taxable. These expenses are enumerated below:

Reference	Expenses	Allowable limit
section 30(g)	Head Office expenses by a company not incorporated in Bangladesh	10% of disclosed net profit
section 30(h)	Royalty, technical services fee, technical knowhow fee or technical assistance fee	8% of disclosed net Profit
section 30(j)	Incentive bonus	10% of disclosed net profit
section 30(k)	Overseas travelling expense	1.25% of turnover

Instances of some expenses which are capital expenditure as per Generally Accepted Accounting Principles (GAAP) but allowable as revenue expenses as per Income tax law

	particulars	Accounting principles	Income tax provision
(a)	Extension expenditure for bringing new areas under cultivation for tea and rubber companies	Capital	Revenue as per Rule 31 and 32
(b)	Building constructed for educational Institution or hospital or Institute for the benefit of employees and their dependents free of cost and giving training to industrial workers (Sec 29(1)(xxiii))	Capital	Revenue u/s 29(i) (xxii)
(c)	Expenditure of capital nature expended on scientific research in Bangladesh (Sec 29(1)(xx))	Capital	Revenue u/s 29(i) (xx)

Worked example 1:

State with reasons whether the following expenses are fully or partly admissible as deduction while computing income from business or profession:

1. Stock-in-trade was lost in fire, amounting to Tk. 12,000 and was debited to Profit and Loss Account.
2. Amount spent on a successful suit filed against a person for infringing trade mark of the assessee - Tk. 10,000;
3. Interest paid to bank Tk. 15,000 in connection with overdraft obtained for paying dividend;
4. Overseas traveling expense Tk. 60,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
5. Incentive bonus Tk. 3,00,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
6. Salary paid to two employees @ Tk. 20,000 per month; one is paid in cash and another through bank transfer.
7. Royalty paid Tk. 2,00,000; The amount of disclosed turnover and disclosed net profit is Tk. 40,00,000 and Tk. 20,00,000 respectively;
8. Salary expense of a firm Tk. 100,000 of which Tk. 40,000 is paid to a partner as salary;
9. Installation cost of an IPS, Tk. 50,000;
10. Penalty paid for violating income tax law Tk. 25,000.
11. Repair expense of the hired premises paid Tk. 50,000. The building is used both for office and residence at an equal proportion.
12. Insurance premium paid Tk. 25,000, of which Tk. 5,000 is the life insurance premium of the owner.

Solution 1:

1. Loss of stock-in-trade is an admissible business loss as decided in the court cases..
2. Litigation / legal expense is an admissible expense as it is spent for protecting business interest. Any legal expense for illegal purpose is not allowable.
3. Interest expense on overdraft taken for business purpose is admissible expense.
4. Overseas traveling expense is admissible up to 1.25% of the disclosed turnover, so here the expense is admissible Tk. 50,000 (1.25% of Tk. 40,00,000) and rest of Tk. 10,000 will be inadmissible.
5. Incentive bonus is admissible up to 10% of the disclosed net profit, so here the admissible amount is up to Tk. 200,000 (10% of Tk. 20,00,000) and the rest of Tk. 100,000 is inadmissible.
6. Out of total salary expense Tk. 480,000, Tk. 240,000 is admissible as it has been paid through bank transfer and the remaining Tk. 240,000 is inadmissible as it has been paid in cash violating section 30(i).

7. Royalty is admissible up to 8% [assuming that this year is not within 1st 3 years] of disclosed net profit, so here admissible amount is Tk. 160,000 (8% of Tk. 20,00,000) and rest of Tk. 40,000 is inadmissible.
8. Out of total salary expense Tk. 100,000, Tk. 60,000 is admissible as it has been paid to employees and rest of Tk. 40,000 is inadmissible as it has been paid to a partner of the partnership firm violating section 30(b).
9. Installation cost of an IPS not admissible, as it is a capital expenditure.
10. Not admissible as the penalty is imposed for violation of laws.
11. Out of total repair expense of Tk. 50,000, Tk. 25,000 is admissible which is for the portion of office use and the rest Tk. 25,000 is inadmissible as half portion of the house has been used for residence.
12. Out of total insurance premium of Tk. 25,000, Tk. 20,000 is admissible which is for the protection of business interest and the rest of Tk. 5,000 is inadmissible as it is given for personal interest of the owner. (Reference section 29(1)(ii) proviso.)

Worked example 2:

The Profit and Loss Account of Janani Traders owned by Mr. Rajon Majumder for the year ended on June 30, 2018 is given below:

Janani Traders
Profit and Loss Account
For the year ended on June 30, 2018

Debit	Taka	Credit	Taka
Salary	380,000	Gross profit	1,950,000
Commission	70,000	Interest on securities	180,000
Rent of premises	132,000	Interest on bank deposit	32,000
Fund embezzlement	30,000	Recovery of bad debt	18,000
Donations	150,000	Gain on sale of furniture	27,000
Bad debt	80,000		
Life Insurance premium	50,000		
Depreciation on furniture	40,000		
Provision for income tax	38,000		
Repair expense	26,000		
License renewal fee	4,000		
Penalty and fine	37,000		
Bonus	80,000		
Royalty	70,000		
Interest on Bank Loan	45,000		
Household expenses	22,000		
Net profit	953,000		
	2,207,000		2,207,000

Other information:

1. Salary includes Taka 87,000 paid to the owner.
2. Fund embezzlement occurred after office hour.
3. Donations include Taka 70,000 paid to a charitable hospital that is not approved by the Board
4. Life insurance premium is the payment against the insurance policy in the owner's name.
5. Tax depreciation amounts to Taka 30,000.
6. Furniture sold for Tk. 78,000 that was originally purchased for Tk. 70,000. Written down value of the furniture on the date of sale was Tk. 51,000.

Compute the income from business or profession of **Janani Traders** for the year ended on June 30, 2018.

Solution 2:

Assessee: Janani Traders
Income year: 2017-18 [Assessment year: 2018-19]

Particulars	Taka	Taka
Income from business and profession:		
Profit as per P/L Account		9,53,000
Add: Inadmissible expenses		
1. Salary [Note-1]	87,000	
2. Fund embezzlement [Note-2]	30,000	
3. Donations [Note-3]	70,000	
4. Life insurance premium [Note-4]	50,000	
5. Depreciation (to be considered later on)	40,000	
6. Provision for income tax	38,000	
7. Penalty and fine	37,000	
8. Household expense	<u>22,000</u>	<u>374,000</u>
		13,27,000
Less: Depreciation (As per tax law)		<u>30,000</u>
Less: Non-business income		12,97,000
1. Interest on securities	1,80,000	
2. Interest on bank deposit	32,000	
3. Capital gain on sale of furniture[Note-7]	<u>8,000</u>	<u>2,20,000</u>
Taxable income from business		<u>10,77,000</u>

Notes:

- Salary paid to the owner is not admissible expense.
- Fund embezzlement occurred after office hour is not allowable expenditure.
- Donation Tk. 70,000 to un- approved organization not allowable.
- Life insurance premium is inadmissible as this is personal expense.
- Royalty is admissible up to an amount equal to 8% [assuming that this year is not within 1st 3 years] of the disclosed net profit i.e. 8% of Tk. 9,53,000 i.e. Tk. 76,240. Thus actual royalty payment Tk.70,000 is admissible because it is lower than admissible limit.
- Bonus is admissible up to 10% of the disclosed net profit i.e. 10% of Tk. 9,53,000, i.e. Tk. 95,300. Thus actual bonus payment Tk.80,000/ is admissible because it is lower than admissible limit.
- Capital gain on sale of furniture was Tk. 8,000 (Tk. 78,000 – Tk. 70,000). This amount should be considered as income under the head 'Capital Gains'. Actual revenue gain is Tk.19,000 but shown Tk.27,000, so Tk. 8,000 is to be deducted to arrive real income from business or profession.

Worked example 3:

The Trading and Profit & Loss Account of **Jahur and Brothers** for the year ended on June 30, 2018 is given below:

Jahur and Brothers
Trading & Profit and Loss Account
For the year ended on June 30, 2018

Debit	Taka	Credit	Taka
Opening stock	80,000	Sales	1,450,000
Purchases	700,000	Closing stock	160,000
Wages	60,000		
Depreciation on machinery	15,000		
Power and fuel	10,000		
Gross profit	745,000		
	1,610,000		1,610,000
Salaries	120,000	Gross profit	745,000
Rent, rates and taxes	18,000	Compensation received	80,000
Annual membership fee	40,000	Bad debt recovered	27,000
Legal expenses	15,000	Interest and discount received	25,000
Underwriting commission	30,000	Interest on tax-free commercial securities	80,000
Purchase of trademarks	80,000	Dividend on listed company's share	60,000
Bad debts	30,000	Commission	28,000
Accounting fees	40,000		
Depreciation - office building	35,000		
Penalties	18,000		
Donation to flood relief fund	50,000		
Gratuity to employees	136,000		
Advance income tax	35,000		
Loss on sale of office furniture	18,000		
Dowry paid to the daughter	70,000		
Miscellaneous expense	30,000		
Net profit	280,000		
	1,045,000		1,045,000

Other information:

- Salaries include Taka 20,000 as salaries paid to the owner.
- Recovered amount of bad debt was previously allowed as bad debt expense.
- Legal expense is incurred for filing and continuing a case against competitor for protecting the interest of the business.
- Penalties were due to avoidance of tax payment at an earlier period.
- Annual membership fee is the fee paid to trade union for the interest of the business.
- Compensation money is received from insurance company against a claim lodged due to destroy of machinery originally purchased for Tk. 70,000 with a written down value of Tk. 50,000.
- Tax depreciation was calculated as follows:

a. Depreciation on machinery	Taka 25,000
b. Depreciation on office building	Taka 50,000

Required: Compute the income from business or profession and also total income of Jahur and Brothers for the year ended on June 30, 2018.

Solution 3:

Assessee: Jahur and Brothers
Income year: 2017-18
Assessment year: 2018-19

Particulars	Taka	Taka
Income from business and profession:		
Net profit as per Profit and Loss Account		280,000
Add: <u>Inadmissible expenses</u>		
(1) Salaries paid to owner	20,000	
(2) Underwriting commission	30,000	
(3) Purchase of trademarks	80,000	
(4) Penalties	18,000	
(5) Advance income tax	35,000	
(6) Dowry paid to the daughter	70,000	
(7) Depreciation (to be considered later on)		
On machinery	15,000	
On office building	<u>35,000</u>	
		<u>303,000</u>
		583,000
Less: Depreciation allowance (As per tax law)		
On machinery	25,000	
On office building	<u>50,000</u>	
		<u>75,000</u>
		508,000
Less: <u>Non-business Income</u>		
(1) Interest on tax free commercial securities	80,000	
(2) Capital gains (Tk. 80,000 – Tk. 70,000)	10,000	
(3) Dividend on X Ltd.'s share	<u>60,000</u>	
		<u>150,000</u>
Taxable income from business or profession		358,000
Add: <u>Non-business income</u>		
Income from interest on securities		
Interest on tax free commercial securities	80,000	
Less: Exempted fully as per 6 th schedule(part-A) para-24	<u>80,000</u>	nil
Capital gain		10,000
Income from other sources		
Cash Dividend [tax free up to Tk.25,000]		<u>35,000</u>
Total income		<u>403,000</u>

Worked example 4:

For the income year ended on June 30, 2018, Gaco Pharmaceutical Company reports net profit of Tk. 17,983,000. A close scrutiny of its books of accounts reveals the following items:

- Salary and allowances includes perquisites of five directors as mentioned below:

Director 1	Director 2	Director 3	Director 4	Director 5
Tk. 405,000	Tk. 475,000	Tk. 580,000	Tk. 625,000	Tk. 455,000

- Amount paid to a contractor of Tk. 85,000 without deducting tax at source.
- Profit includes Tk. 85,000 as gain on sale of asset. The original cost of the asset was Tk. 70,000 and on the date of sale, the written down value of the asset was Tk. 50,000.

4. The company lodged a claim against the demolishing of an asset and recovered Tk. 70,000. The cost was Tk. 80,000, however, the written down value of the asset was Tk. 50,000.
5. The company has income of Tk. 420,000 from tea grown and manufactured in Bangladesh which was not considered at the time of computing profit.
6. The company has transferred export quota of garments to another company whose export value is estimated as Tk. 800,000. No income is reported in profit and loss account.
7. Entertainment expense charged was Tk. 450,000.
8. Finance director received foreign travel allowance of Tk. 500,000 which is charged against the profit. He has also received similar allowance in last year and it was allowed at that time.
9. Expense for free sample distribution is shown as Tk. 340,000. Reported turnover for the year is Tk. 87,953,000.
10. Royalty expense charged Tk. 112,000.
11. Depreciation charged Tk. 253,000 whereas tax depreciation is Tk. 180,000.

Compute income from business or profession, considering the information given above.

Solution 4:

Assessee: Gaco Pharmaceutical Company
Income year: 2017-18
Assessment year: 2018-19

Particulars	Taka	Taka
Income from business and profession:		
Net profit as per Profit and Loss Account		17,983,000
Add: Inadmissible expenses		
1. Excess perquisites (as per section 30(e))	105,000	
2. Payment to contractor without tax deduction(sec 30(aa))	85,000	
3. Capital gains on sale of asset for consideration at separate head (Tk. 85,000 – Tk. 70,000)	15,000	
4. Entertainment (for separate consideration as per Rule-65)	450,000	
5. Foreign travel allowance (note-2)	500,000	
6. Depreciation allowance(to be considered later on)	<u>253,000</u>	
		<u>1,408,000</u>
		19,391,000
Less: Depreciation allowance (As per tax law)		<u>180,000</u>
		19,211,000
Less: Entertain (note-1)		<u>404,220</u>
		18,806,780
Add: Income from tea garden (40% of Tk. 420,000)	168,000	
income from transferring export quota (3% of Tk. 800,000)	<u>240,000</u>	<u>408,000</u>
Taxable Income from business or profession		<u>19,214,780</u>

Notes:

1. Allowable entertainment expense is – 1,000,000 @ 4% + 18,211,000 @ 2% = 40,000 + 364,220 = Tk. 404,220.
2. Foreign travel allowance is allowable for once in every two years. As last year, the director received such allowance and it was considered at that time, so nothing to be allowed this year.
3. Expense for free sample distribution is within the allowable limit. So nothing to be disallowed as it is within limit.
4. Royalty expense is within the limit [assuming that this year is not within 1st 3 years]. Thus, the whole amount is admissible.

Self-assessment questions

1. State the main provisions of Sections 28, 29 and 30 of the Income Tax Ordinance 1984 relating to computation of income under the head 'income from business or profession'.
2. State the provisions of the Income Tax Ordinance 1984 relating to:
 - (i) Obsolescence allowance; and
 - (ii) Balancing charge.
3. (a) It is said that the list of allowances under Section 29 of the Income Tax Ordinance for computation of income under the head 'income from business or profession' is not exhaustive. Write your comments on the above statement.

(b) List the inadmissible expenses under section 30 of the Ordinance.
4. The Income statement with selective notes thereon of Zian Ltd for the year ended on June 30, 2018 is as under:

Zian Ltd
Income statement
For the year ended on June 30, 2018

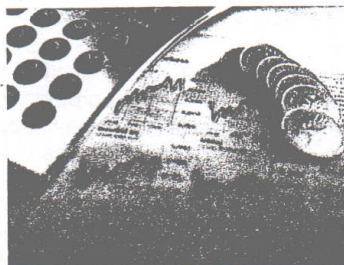
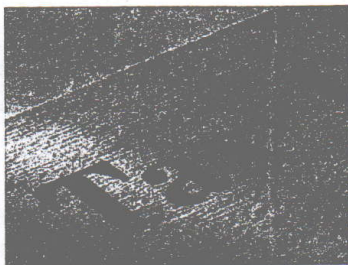
Particulars	Taka
Net sales	15,000,000
Less: Cost of goods sold	8,800,000
Gross profit	6,200,000
Add: Gain on sale of building (Note 1)	2,200,000
	4,000,000
Less: Administrative and selling & distribution expenses (Note 2)	2,400,000
Net profit	1,600,000

Other information:

1. The Cost of the Building was Taka 8,000,000 and the amount of accumulated depreciation up to the date of sale was Taka 2,700,000 and sold for Taka 7,500,000.
2. Administrative and selling & distribution expenses:

Salaries and wages	Taka	1,562,000
Fines and penalties		125,000
Rents, rates & taxes		80,000
Provision for bad and doubtful debts		60,000
Legal charges		37,000
Underwriting commission		120,000
Incentive bonus		40,000
Cost of issuing shares		100,000
Audit fees		60,000
Overseas traveling expense		100,000
Depreciation		116,000
Total		2,400,000
3. Salary and wages includes Taka 180,000 as payment to the owners and Taka 520,000 as payment classified as perquisites.
4. The fines and penalties are charged by a local court for involvement in illegal business transactions.
5. Legal charges have been incurred for defending a suit for breach of a trading contract.
6. Tax depreciation amounts to be Taka 80,000.

Compute the income from business or profession of Zian Ltd for the year ended on June 30, 2018.



Chapter 9

Capital gain

Contents

Introduction

Examination context

Topic list

9.1	Basic theory of capital gain
9.2	Definition of capital asset
9.3	Computation of capital gain
9.4	Tax exempted capital gain
9.5	No exemption on certain capital gain if investment tax rebate facility enjoyed
9.6	Tax rates of capital gain
9.7	Special reduced tax rate on gain from sale of shares and stocks
9.8	Apportionment of sale proceeds between original cost and subsequent improvements

Worked examples

Introduction

Learning objectives

- Identify capital gain.
- Compute the taxable income under the head 'capital gain'.
- Identify the allowable deductions under the head.
- Identify tax exempted capital gains.
- Identify the complexity of computing income from capital gains.
- Identify special reduced tax rate on capital gain earned by individuals.
- Compute tax liability on capital gains in different situations.

Practical significance

The head 'capital gain' is very significant in terms of understanding and applications. Transfer of capital assets is very common in business. Thus, in what situations, transfer of capital assets will result capital gain, what may happen if the gain is reinvested within a certain time period, what are the powers of DCT regarding the value of declared sale proceeds are some important points covered in the chapter.

Capital gains tax rate is different than the regular tax rates applicable to individuals and other assesses. Thus, the assessment and computation of tax liability is to a greater extent different in case of capital gain. These points are also addressed with due importance.

The chapter, as usual, also presents the scope of income under the head, admissible expenses inadmissible expenses and other related issues.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of taxable income under the head 'capital gain' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining real capital gain.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define capital gain.
- Identify different scope of income under the head.
- Compute taxable capital gain.
- Illustrate non-taxable capital gains.
- Identify the allowable deductions under the head.
- Illustrate the power of the DCT if he believes that the declared value at which the capital asset is transferred is lower than fair market value.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income from capital gain.

9.0 CAPITAL GAIN

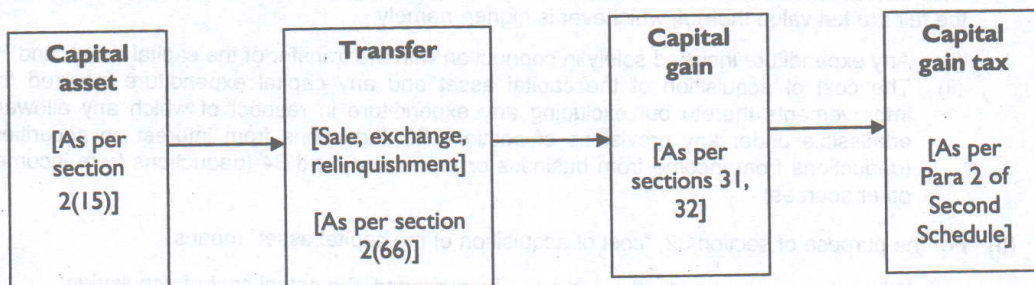
Section overview

- There is no capital gain tax on transfer of personal effects and shares of listed companies for individual taxpayers.
- There is no capital gain tax on the transfer of land and buildings to a new company formed to set up an industry.
- In determining the transfer value, income tax authority may consider the fair market value if he believes that transfer value is lower than fair market value.
- Capital loss can only be set off against any other capital gain during the year..
- It is taxed @ 15 % in the case of company.
- Non-resident individuals are also exempt from capital gain tax on gain from sale of stocks and shares of listed companies provided they enjoy the same benefit in their home country.

9.1 Basic principles of capital gain

Section 31 provides that tax shall be payable by an assessee under the head "capital gain" in respect of any gain arising from the transfer (i.e. sale, exchange or relinquishment, etc.) of any capital asset. Such gain shall be deemed to be the income of the income year in which the sale, exchange, relinquishment, etc. took place.

Any gain arising from transfer of a capital asset (both movable and immovable) as defined in section 2(15) of the Income Tax Ordinance 1984 is chargeable to income tax in accordance with paragraph 2 of the Second Schedule of the Ordinance which prescribe rates of income tax on capital gain.



9.2 Some statutory definitions

Capital asset

A capital gain arises only due to the transfer of capital asset. Capital asset is defined in section 2(15) of ITO 1984. Capital asset means property of any kind held by an assessee, whether or not connected with his business of profession, but does not include-

- (a) Any stock-in-trade (not being stocks and shares), consumable stores or raw materials held for the purposes of his business or profession;

- (b) Personal effects, that is to say, movable property (including wearing apparels, jewellery, furniture, fixture, equipment and vehicles), which are held exclusively for personal use by, and are not used for purposes of the business or profession of the assessee or any member of his family dependent on him; and

Fair market value

In relation to capital asset, fair market value means –

- (a) the price which such asset would ordinarily fetch on sale in the open market on the relevant day, and, where such price is not ascertainable, the price which the Deputy Commissioner of Taxes may, with the approval in writing of the Inspecting Joint Commissioner, determine;
- (b) the residual value received from the lessee in case of an asset leased by a financial institution having license from the Bangladesh Bank on termination of lease agreement on maturity or otherwise subject to the condition that such residual value plus amount realized during the currency of the lease agreement towards the cost of the asset is not less than the cost of acquisition to the lessor financial institution [section 2(30)].

Transfer

Transfer, in relation to a capital asset, includes the sale, exchange or relinquishment of the asset, or the extinguishment of any right therein, but does not include:

- a) Any transfer of the capital asset under a gift, bequest, will or an irrevocable trust;
- b) Any distribution of the assets of a company to its shareholders on its liquidation; and
- c) Any distribution of capital assets on the dissolution of a firm or other association of persons or on the partition of a Hindu undivided family [section 2(66)].

9.3 Computation of capital gain

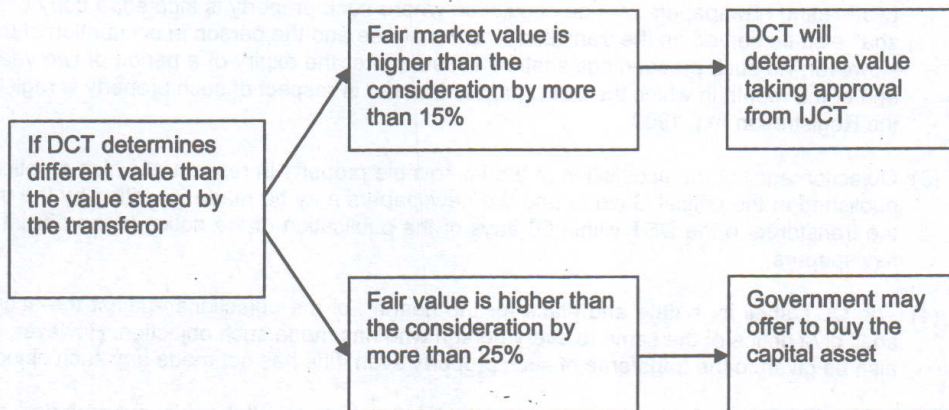
Section 32 of ITO 1984 explains the methodology of computing capital gain. In line with the provisions of that section, computation of capital gains is presented below:

- (a) The income under the head "capital gain" shall be computed after making the following deductions from the full value of the consideration received or accruing from the transfer of the capital asset or the fair market value thereof, whichever is higher, namely:
- (i) Any expenditure incurred solely in connection with the transfer of the capital asset; and
- (ii) The cost of acquisition of the capital asset and any capital expenditure incurred for any improvements thereto but excluding any expenditure in respect of which any allowance is admissible under any provisions of sections 23(deductions from interest on securities), 29 (deductions from income from business or profession) and 34 (deductions from income from other sources).
- (b) For the purpose of section 32, "cost of acquisition of the capital asset" means-
- (i) Where it was acquired by the assessee by purchase, the actual cost of acquisition;
- (ii) Where it becomes the property of the assessee-
- (a) Under a deed of gift, bequest or will; or
- (b) Under a transfer on a revocable or irrevocable trust; or
- (c) On any distribution of capital assets on the liquidation of a company; or
- (d) On any distribution of capital assets on the dissolution of a firm or other association of persons or the partition of a Hindu undivided family.

The actual cost of acquisition to the previous owner of the capital asset as reduced by the amount of depreciation, if any, allowed to the previous owner; and where the actual cost of acquisition to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner.

However, where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the cost of acquisition of the capital asset to the assessee shall be its written down value increased or diminished, as the case may be, by any adjustment made under section 19(16) or (17) or section 27(1) (i) or section 29(1) (xi):

Where the capital asset became the property of the assessee by succession, inheritance or devolution, the actual cost of acquisition of the capital asset to the assessee shall be the fair market value of the property prevailing at the time the assessee became the owner of such property.



Determination of fair market value

Where in the opinion of the DCT, the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than 15% of the value so declared, the fair market value of the capital asset shall, with the previous approval of the IJCT, be determined [section 32(3)].

Offer to buy the capital assets by the Government

Where in the opinion of the DCT, the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the declared value thereof by more than 25% of such declared value, the Government may offer to buy the said asset in such manner as the NBR may prescribe [section 32(4)].

Illustration-1

Mr. Jashim declared the price of a piece of land at Tk. 3,000,000 on 15th July, 2016; however, the DCT estimates the fair value of the land to be Tk. 3,500,000 i.e. more than 15% of the declared value. He can with the prior approval of the IJCT, determine the fair value at Tk. 3,500,000 and can compute capital gain or loss accordingly rejecting thereby Mr. Jashim's declared value.

Further the Government may offer to buy the land when in the opinion of the DCT; the fair market value of the said land is say, Tk. 4,000,000 i.e. at least 25% more than the declared value. It is not clear whether in this case, Government would actually buy or uses the pre-emption right to determine under-declaration.

The manner to be followed in connection with the purchase of a capital asset by the Government under section 32(4) of the Ordinance shall be as follows:

- (1) Where the DCT has reason to believe that any immovable property is being transferred by a person (hereinafter referred to as the transferor) to another person (person hereinafter referred to as the transferee) and the fair market value of such property exceeds the declared value by more

than twenty-five per cent, and the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay the tax under the Ordinance in respect of any income arising from the transfer or any other taxes or duties, he may, subject to the provisions of this rule, initiate proceedings for the acquisition of such property by the Government.

- (2) The DCT shall initiate proceedings for acquisition of immovable property under rule 40 by giving a notice to that effect in the official Gazette and a copy of such notice shall also be published in the two leading newspapers of wide circulation where such property is located; a copy of such notice shall also be served on the transferor, the transferee and the person in occupation of the property. However, no such proceedings shall be initiated after the expiry of a period of two years from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908.
- (3) Objection against the acquisition of the immovable property in respect of which a notice has been published in the official Gazette and the newspapers may be made in writing by the transferor or the transferee to the DCT within 60 days of the publication of the notice in the official Gazette or newspapers.
- (4) The DCT shall fix a date and place for the hearing of the objections against the acquisition and shall give notice of the same to every person who has made such objection. However, notice shall also be given to the transferee of such property even if he has not made any such objection.
- (5) After hearing the objections, if any, after taking into account all the relevant materials on record, if the Deputy Commissioner of Taxes is satisfied that-
 - (a) The fair market value of such property exceeds the consideration paid therefore by more than twenty-five per cent of such consideration, and
 - (b) The consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (1); he may make an order for the acquisition of the property under this rule.
- (6) Any person aggrieved by an order made under rule 40(5) may prefer an appeal under the Ordinance to the Appellate Joint Commissioner of Taxes.
- (7) As soon as may be after the order of acquisition of any immovable property has been made under Rule-40(5) and after the disposal of appeal, if any, the DCT may by notice in writing, order any person who may be in possession of the immovable property to surrender or deliver possession thereof to him or any other person duly authorized by him in writing in these behalf within 30 days of the service of the notice.
- (8) If any person refuses or fails to comply with a notice under rule 40(7), the DCT or any other person duly authorized by him under that clause may take possession of the immovable property and may, for that purpose, requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition and may use such force as may be necessary.
- (9) When the possession of the immovable property is surrendered or delivered under rule 40(7), the DCT or the person duly authorize by him in that behalf or, as the case may be, when the possession thereof is taken under rule 40(8), the Government shall tender as consideration a sum equal to the aggregate of the amount of the declared value for its transfer plus 10% of the said amount to the transferor and the property shall vest absolutely in the Government free from all encumbrances. However, nothing in rule 40(9) shall operate to discharge the transferor or the transferee or any other person (not being the Government) from any liability in respect of such encumbrances, and notwithstanding anything contained in any other law, such liability may be enforced against the transferor or the transferee or such other person by a suit for damages.

- (10) Notwithstanding anything contained in rule 40(9), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Government shall deposit in the principal civil court of original jurisdiction the amount required to be tendered under rule 40(9) and refer such dispute for decision of the court and the decision of the court thereon shall be final.

Transfer of capital asset used in the business: section 32(5)

A capital gains arising from transfer of a capital asset being buildings or lands which immediately before the date on which transfer took place was being used by the assessee for the purposes of his business or profession shall be exempted from payment of the capital gains tax up to the extent and upon fulfillment of the conditions as mentioned below:-

- A new capital asset for the purposes of his business or profession has to be purchased within a period of one year before or after the date of transfer.
- The declaration shall have to be filed for exemption before the assessment is made.
- When the capital gain is greater than the cost of the new asset, the capital gain up to the extent of cost of acquisition of the new asset shall be exempted and the balance shall be charged to tax. In determining the depreciation on such asset, cost shall be taken to be nil.
- When the capital gain is equal or less than the cost of the new asset, no tax shall be charged on the capital gain.

The time-limit for purchase of the new asset can be extended by the DCT with prior approval of the Inspecting Joint Commissioner of Taxes.

Illustration-2:

Let us assume that a gain of Tk. 1,000,000 is realized by Company X on transfer of a building which was used by the company for running its business. However, within one year, the company has acquired another building costing Tk. 1,500,000. Show the implication of capital gain tax.

Gain on transfer of building	1,000,000
Cost of the new building	<u>1,500,000</u>
Capital gains chargeable to tax	nil
Depreciation allowance will be available on additional investment	500,000

However, if the new building was purchased for Tk. 1,000,000, then

Gain on transfer of building	1,000,000
Cost of the new building	<u>1,000,000</u>
Capital gains chargeable to tax	nil
Depreciation allowance will be available on additional investment	nil

Again, if the new building was purchased for Tk. 800,000, then

Gain on transfer of building	1,000,000
Cost of the new building	<u>800,000</u>
Capital gains chargeable to tax	200,000
Depreciation allowance will be available on additional investment	nil

Illustration-3:

XYZ Company sold a piece of land on 15 July, 2017 for Tk. 20 million. It incurred advertisement cost of Tk. 80,000 and paid Tk. 300,000 brokerage commission. It bought the land 5 years back at a cost of Tk. 3 million, stamp duty and legal costs were Tk. 400,000 and Tk. 90,000 respectively. On 30 November, 2016 it has bought another piece of land in Dhaka at a cost of Tk. 10 million inclusive of legal costs. The Company has duly informed the DCT about its intention to roll over the capital gain to new land purchased.

XYZ Company
Assessment year 2018-19

Computation of capital gain:

Sale price of land		20,000,000
Less: Commission on sale	300,000	
Advertisement	<u>80,000</u>	<u>380,000</u>
Net sale proceeds		19,620,000
Deduct Cost of acquisition:		
Purchase price	3,000,000	
Stamp duty	400,000	
Legal costs	<u>90,000</u>	<u>3,490,000</u>
Capital gain		16,130,000
Investment made under sec.32(5)		<u>(10,000,000)</u>
capital gains assessed		<u>6,130,000</u>

Tax value of new assets (WDV) would be nil and capital gain tax is Tk. 919,500 i.e. 15% on Tk. 6,130,000.

Let us further assume that the cost of new land is Tk. 25 millions, all inclusive and now the rollover would be:

Cost of new asset	Tk.
25,000,000	
Investment made under sec. 32(5)	<u>(16,130,000)</u>
Tax written down value carried forward	<u>8,870,000</u>

For second land, the acquisition cost would be Tk. 8,870,000 and on its disposal, if any, in future capital gains would be calculated accordingly.

9.4 Tax exempted capital gains

Some capital gains are non-assessable and thus exempted from gain tax. These are -

(a) Transfer of capital assets used for the purpose of business: section 32(5)

If the capital gains, arising out of transfer of capital assets used in the business or profession, is used fully or in part to purchase a new capital asset within a period of one year before or after the date of transfer and if the assessee elects in writing before the assessment for rolling over the gain on new asset.

(b) Transfer of Government securities and shares of public-listed companies: section 32(7)

Capital gains arises from transfer of Government securities are exempt from tax.

(c) Transfer of capital asset being buildings and lands to a new company: section 32(10)

When buildings and lands are transferred to a new company for setting up an industry and the whole amount of capital gain arising out of such transfer is invested in the equity of the said company, then the capital gain shall not be charged to tax in the year of transfer.

(d) Transfer of capital asset of a firm to a new company: section 32(11)

When capital gains arises from the transfer of capital asset of a firm to a new company registered under the Companies Act, 1913/1994 and the whole amount of capital gain is invested in the equity of the said company by the partners of the firm, then the capital gain shall not be charged to tax in the year of transfer.

9.5 No exemption on certain assets if investment allowance is received: sec. 32(12)

No exemption is allowable on capital gains which arises from transfer of the following capital assets as is attributable to the cost of acquisition of such capital asset in respect of which any investment

allowance referred to in paragraphs 1, 2, 3, 4, 5, 6, 10 and 11 of Part 'B' of the Sixth Schedule was at any time allowed, notwithstanding the exemptions available under sections 32(5), (7), (10) and (11):-

1. Insurance sum or deferred annuity (Paragraphs (1), (2) and (3) of Part 'B' of the Sixth Schedule)
2. Provident fund under the Provident Fund Act 1925 (Paragraph (4) of Part 'B' of the Sixth Schedule)
3. Recognized Provident Fund (Paragraph (5) of Part 'B' of the Sixth Schedule)
4. Approved Superannuation Fund (Paragraph (6) of Part 'B' of the Sixth Schedule).
5. Savings Certificate, Unit Certificate, Mutual Fund Certificate, Government securities and shares of investment companies (Paragraph (10) of Part 'B' of the Sixth Schedule).
6. Deposit Pension Scheme (Paragraph (11) of Part 'B' of the Sixth Schedule)

9.6 Tax rate in respect of capital gain

Capital gain tax is different than regular tax and is prescribed in Para 2 of Second Schedule of Income Tax Ordinance, 1984.

Capital gains in the hands of a company other than the capital gain arising out of disposal of share will be taxed as a block of income separate from other income of the assessee company at a flat rate of 15% regardless of the period of holding of the asset from the date of its acquisition.

If the assessee is other than a company and the asset is transferred before the expiry of five years from the date of its acquisition, the capital gains will be taxed at the usual tax rate applicable to the assessee's total income including the capital gains. If the asset is transferred at any time after the expiry of five years from the date of its acquisition, the capital gains will be taxed at the usual tax rate applicable to the assessee's total income including capital gains or on capital gains @15% whichever of the two is lower. Thus, in short the rates can be specified as below:

Capital gain arises to	Situations	Tax rate
(a) company		@ 15%
(b) person other than company	i) due to disposal within 5 years	At regular slab rate
	ii) due to disposal after 5 years	At regular rate
		or
		@ 15%, whichever is lower

9.7 Special tax rates on capital gain from sale of shares of listed companies

As per SRO 196-AIN/IT/2015 circulated on 30/6/2015, special tax rate is applied on capital gains from sale of shares by specified persons as mentioned below:

The following reduced tax rates will be applicable on the income earned from transaction of securities (excluding government securities) listed in the Stock Exchanges:

Sl.	Nature of taxpayer's income	Tax rate
(a)	Any income earned from trading of shares/securities by any Sponsor Shareholder / Director of a Bank, Financial Institution, Merchant Bank, Insurance Company, Leasing Company, Portfolio Management Company, Stock Dealer or Stock Broker Company	5%
(b)	Any income earned from trading of shares/securities by any Shareholder [excluding the Sponsor Shareholders/Directors mentioned in above Sl. (b)] having 10% or more shares of the total paid up capital of a company / companies listed at any time during the income year	5%

1. If a shareholder mentioned in Sl. (c) is a company or firm, then tax rate will be 10%, as 10% tax rate is applicable for company and partnership firm.
2. In case of transferring the shares by any sponsor shareholder / director mentioned in Sl. (b), tax will be deducted at the rate of 5% on the difference between transfer value and cost of acquisition of the securities as per section 53M of the ITO, 1984.

3. The income from trading of shares of all other types of taxpayers' excluding those mentioned in the above lists is **exempted** from tax.
4. Here, the term "securities" will include any stocks, shares, mutual fund units, bonds, debentures or other securities of any listed company tradable in the stock exchanges of the country (excluding the securities issued by the government).

9.8 Apportionment of sale proceeds between original cost and subsequent improvements

Since capital gain tax differs in rates in case of assessee other than a company depending on the length of period the property is held by the assessee, it is essential to assign capital gain on them separately.

Illustration

Mr. Jarin bought a building within the jurisdiction of Dhaka Municipality 8 years back for Tk. 65 million on which he also incurred another Tk. 35 million as improvements 4 years ago. He sold the property in mid-June, 2018 for Tk. 180 million.

Now, sale proceeds of Tk. 180 million should be apportioned between original cost and improvements due to different capital gain tax rate applicable for transfer made within 5 years and after five years. Such apportionment is made below proportionately:

On original cost: Tk. 180 million \times 65/100 = Tk. 117 millions

On improvement: Tk. 180 million \times 35/100 = Tk. 63 millions

Now capital gains and tax on capital gain will be computed as below:

	Original cost	Improvements
Cost	65,000,000	35,000,000
Sale proceeds	117,000,000	63,000,000
Capital gain assessed	52,000,000	28,000,000
Capital gain tax rate	Regular rate or 15%, whichever is lower	
		15%

Improvement part has been disposed of within 5 years of acquisition and thus Tk. 28 million would be included with the total income of the assessee. Original cost part has been held for 8 years and the tax on it, would be the lower of tax payable on the total income including capital gains or on capital gain @ 15%

Worked examples and solutions

Worked example 1:

Mr. Ershad has recorded the following transactions for the year ended on June 30, 2018. You are required to comment on implication of capital gain and capital gain tax on each of the following transactions independently.

- (a) He has sold a motor car at Tk. 600,000 that he purchased in 2012 at a cost of Tk. 400,000 and used solely for personal purposes.
- (b) Sold a 3-storied building for Tk. 3,000,000 in December 2017, which was purchased on March 2007 for Tk. 1,800,000. In January 2011, the building was extended at a total cost of Tk. 500,000. The fair value of the building in December 2017 was Tk. 3,200,000.
- (c) Sold an agricultural land situated outside the jurisdiction of Comilla Cantonment Board at a total price of Tk. 2,000,000 which was purchased 5 years back at a total price of Tk. 1,000,000.
- (d) Sold a machine, purchased at a price of Tk. 80,000 for the purpose of his business, at a price of Tk. 150,000 at fair market value. Another Tk. 30,000 was spent to improve the machine. At the time of sale, the machine had accumulated depreciation amounting to Tk. 60,000.

Solution 1:

(a) The motor car is a movable property and used exclusively for personal purposes. It does not fall under the definition of capital asset as per section 2(15). Thus, he is not required to assess capital gain on this transfer and no taxes as well.

(b) Calculation of capital gains from the sale of building:

Sale proceeds or fair market value whichever is higher		Tk. 3,200,000
Less:		
Cost of acquisition	Tk. 1,800,000	
Cost of extension	<u>500,000</u>	<u>2,300,000</u>
Capital gain		Tk. 900,000

Here, capital gain will be taxed at regular rate or 15%, whichever is lower as transfer is made after 5 years (both original cost and extension work).

(c) Gain on sale of agricultural land situated outside the jurisdiction of a cantonment board was tax free as per section 2(15)(c). But now it is taxable with effect from 01/7/2014 as section 2(15)(c) has been deleted through finance act, 2014.

(d) Calculation of capital gain from the sale of machine:

Sale proceeds or fair market value whichever is higher		Tk. 150,000
Less:		
Cost of acquisition	Tk. 80,000	
Cost of improvement	<u>30,000</u>	<u>110,000</u>
Capital gain		Tk. 40,000

Worked example 2:

Mr. Ashiqur Rahman purchased an apartment in November 2014 for Tk. 1,600,000. He has paid 1% brokerage fee and subsequently spent another Tk. 500,000 for the renovation of the house. On 1st July, 2017 he entered into an agreement to sell the property to Mr. Anowar for a consideration of Tk. 5,000,000 and received earnest money (advance money) of Tk. 100,000.

As per the terms of the agreement, the balance payment should be made within 90 days of the agreement otherwise the earnest money will be forfeited. As Mr. Anowar could not make the payment within the stipulated time the amount of Tk. 100,000 was forfeited by Mr. Rahman. Subsequently on 10th June, 2018, Mr. Rahman sold the apartment to Mr. Abdur Rahman for Tk. 5,500,000. He also paid 2% brokerage fee on sale of the apartment. The fair market value of the house on the date of sale was Tk. 5,200,000. Calculate taxable capital gains for the assessment year 2018-19.

Solution 2:

Computation of taxable capital gain:

Particulars	Taka	Taka
Income under "capital gain" (sec 31):		
Full value of consideration received against capital asset: (including the forfeited amount of Tk. 100,000)	5,600,000	
Fair Market Value at the time of transfer, Disposal value of the capital asset (whichever is higher)	<u>5,200,000</u>	5,600,000
Less - Allowable deductions		
Brokerage fee for sale (5,500,000 x 2%)	110,000	
Cost of acquisition [1,600,000 + (1,600,000 x 1%)]	1,616,000	
Cost of improvements of the asset	<u>500,000</u>	<u>2,226,000</u>
Capital gain		<u>3,374,000</u>

Worked example 3:

Mr. Jason runs a business of his own. He has purchased a piece of land for the purpose of his business at a cost of Tk. 10,000,000 on 1st January 2008 within the jurisdiction of Chittagong Municipality. He has paid Tk. 50,000 as finder's fee and another Tk. 120,000 as registration fee for the land. He has sold the land on July 15, 2017 at Tk. 22,000,000. For this sale, he has to pay brokerage fee @ 2% on the gross sales amount received.

In DCT's opinion, the fair market value of the land at the time of sale is Tk. 20,000,000. On June 30, 2018 he has purchased another land at a cost of (a) Tk. 10,000,000 (b) Tk. 12,000,000 and expressed his intention of getting roll over relief of capital gain on new land in writing to DCT.

He also had Tk. 200,000 as taxable income from interest on securities and Tk. 100,000 from income from other sources.

Solution 3:

Assessee: Mr. Jason
Income year: 2017-18
Assessment year: 2018-19

Particulars	Taka	Taka	(a) Taka	(b) Taka
Income under "capital gain" (sec 31):				
Sale proceeds of capital assets, or	22,000,000			
Fair Market Value at the time of transfer, whichever is higher	20,000,000	22,000,000		
Less - Allowable deductions				
(a) Expenditure incurred to transfer the asset (Note 2)	440,000			
(b) Cost of acquisition (Note 3)	10,170,000			
(c) Capital expenditure incurred for improvement of the asset	nil	10,610,000		
Capital gain			11,390,000	11,390,000
Less: Reinvested gain to claim rollover relief [sec 32(5)]			10,000,000	11,390,000
Capital gain assessed (Note 4)			1,390,000	nil
Tax value of new asset			nil	610,000
Computation of taxable income:				
Income from interest on securities (given)			200,000	200,000
Capital gain (as calculated above)			1,390,000	nil
Income from other sources (given)			100,000	100,000
Total taxable income			1,690,000	300,000

Computation of tax liability:

Taxable income			Rate	Amount of tax	
Income tier	Case (a)	Case (b)		Case (a)	Case (b)
Tax on capital gain (15% on 13,90,000)				2,08,500	
Tax on remaining taka 300,000 will be at regular rate (300,00-250,000) x 10%				5,000	5,000
Net tax liability				2,13,500	5,000

Notes:

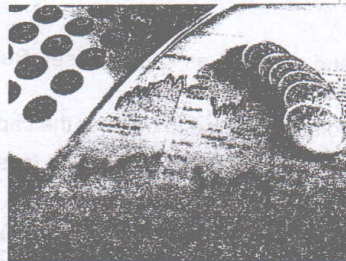
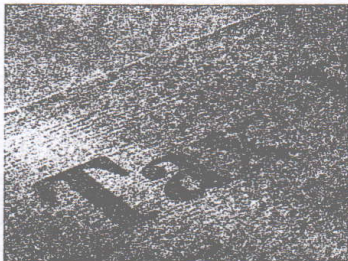
1. The land qualified as capital asset. Because, it is not an agricultural land and is situated within the area jurisdiction as specified.
2. Expenditure incurred to transfer the capital asset, Taka 440,000 (brokerage fees @ 2% of Tk. 22,000,000).
3. Cost of acquisition, Tk. 10,170,000 (cost 10,000,000 + finder's fee 50,000 + registration Fee 120,000)
4. In case of (a) as the investment was less than the capital gain, there will be capital gain equivalent to differential amount and tax have to pay on such amount though the tax value of the new asset will be nil. But in case of (b) investment is more than the capital gain and so there will be no capital gain left to charge under the head and the tax value of the new asset will be the difference between the cost of new assets and capital gain rolled over (taka 12,000,000 - taka 11,390,00).
5. There is no revenue gain as the cost and written down value of the asset is same.
6. Here, the assessee is a person other than a company and the asset is sold after 5 years of purchase. So, as per 2nd schedule, tax rate will be the lower of normal tax on total income including capital gain and 15% flat rate on capital gain, whichever is lower. So in case (a), applicable tax rate on capital gain (taka 1,390,000) will be 15% as this is the lower one and at regular rate on remaining income. But in case of case (b), tax will be applied at regular rate as there is no income under the head 'capital gain'.

Self-assessment questions

1. Explain the terms "capital asset", "cost of acquisition" and "fair market value" under the Income Tax Ordinance 1984.
2. State the capital gain exempted from payment of tax under the ITO, 1984 and SRO.
3. Mr. Hasan has purchased a machine at a total cost of Tk. 500,000 on 23rd April 2011 for the purpose of his profession. In addition, he has paid Tk. 10,000 as legal fees. He has spent an additional sum of Tk. 50,000 for improvement of the machine.

On 30th December 2016, he sold the machine at Tk. 600,000 when the balance of allowable accumulated depreciation was Tk. 126,000 in his books of accounts. But in the opinion of DCT the fair market value on that date amounts to Tk. 650,000. He incurred advertisement cost of Tk. 20,000 and 1.5% as brokerage commission on the sale value. He has taxable income of Tk. 230,000 from all other sources.

Compute capital gain, total income, and specify tax rate thereon.



Chapter 10

Income from other sources

Contents

Introduction

Examination context

Topic list

10.1	Introduction
10.2	Dividend
10.3	Interest income other than interest on securities
10.4	Royalty
10.5	Fees for technical service
10.6	Income from letting of factory building along with machinery
10.7	Deemed income under different sub-sections of section 19
10.8	Allowable deductions
10.9	Inadmissible expenses

Introduction

Learning objectives

- Identify income from other sources.
- Compute the taxable income under the head 'income from other sources'.
- Identify the allowable deductions under the head.
- Identify tax exempted income under the head.
- Introduce the complexity of computing income from other sources.
- Explain the application of TDS and Grossing Up of income in certain cases.
- Compute tax liability on income from other sources in different situations.

Practical significance

The head 'income from other sources' is very significant due to its importance as a residual head of income. Income that doesn't fall under any other head comes under the scope of this head. Thus, it is important to know different categories of income coming under the head. Dividend income, interest income (in specific cases), royalty income, fees for technical services, income from letting factory building along with machineries are some income coming under this head. Some deemed income under section 19 will also be considered as income from other sources.

Tax usually deducted at sources as per law in some categories of income under this head. These incomes are required to be grossed up before reporting them in return of income. Sometimes, these are considered as final settlement of tax liability under section 82C and it is important to know the impact on computing taxable income and tax liability as well.

The chapter, as usual, also presents the scope of income under the head, admissible expenses, inadmissible expenses and other related issues.

You will find the details of the above issues in this chapter with some practical examples.

Stop and think

Do you realize that the computation of taxable income under the head 'income from other sources' is one of the basic requirements for determining tax liability? Can you determine the taxable income under the head? Can you compute net tax liability of an assessee having income under the head?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define income from other sources.
- Identify different scope of income under the head.
- Compute the taxable income under the head.
- Identify TDS and final settlement of tax liability under section 82C.
- Identify the allowable deductions under the head.
- Introduce grossing up of income in certain cases and illustrate its impact on computing taxable income.
- Compute net tax liability under the head.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income from other sources.

10.0 INCOME FROM OTHER SOURCES

Section overview

- ➔ Income from other sources is the last and residual head of income.
- ➔ The total income may not be taxable income.
- ➔ There are some admissible and not admissible deductions under the head.
- ➔ Dividend, interest, royalty and fees for technical services are significant sources of income under the head.
- ➔ On some income under the head, tax is deducted at sources at specified rates.
- ➔ Grossing up of income is important to report taxable income.
- ➔ Sometimes tax deducted at sources is considered as final payment of tax liability under section 82C.
- ➔ There are some admissible and inadmissible deductions under the head.

10.1.1 Introduction

This is the residuary head of income as mentioned in section 20 of the Income Tax Ordinance 1984.

The following income of an assessee is assessable under this head:

- (1) Dividend
- (2) Interest.
- (3) Royalties
- (4) Fees for technical services.
- (5) Income from letting of machinery, plant or furniture and also of buildings if letting of building is inseparable from the letting of the machinery, plant or furniture.
- (6) Deemed income under section 19(1), (2), (3), (4), (5), (8), (9), (10), (11), (12), (13), (21), (24), (27), (29) and (31).
- (7) Income of any kind or from any source which is not classifiable under any of the other heads specified in section 20.

From the above points, income from other sources can be categorized as follows:

Categories	Particulars	References
Specified income	Dividend, interest, royalties, fees for technical services, income from letting of factory building along with machinery	section 33 (a), (b) and (c)
Deemed income	Income as specified in different subsections of section 19	section 33(d), Section 19(1), (2), (3), (4), (5), (8), (9), (10), (11), (12), (13), (21), (24), (27), (29) and (31)
Residual income	Any income that is not classified as income in any other sections	section 33(e)

10.2 Dividend

Section 2(26) defines dividend in this way – Dividend includes -

- (a) any distribution by a company out of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its shareholders of all or any part of its assets or reserves [section 2(26)(a)];
- (b) any distribution by a company, to the extent to which the company possesses accumulated profits, whether capitalized or not, to its shareholders of debentures, debenture-stock or deposit certificates in any form, whether with or without interest [section 2(26)(b)];
- (c) any distribution made to the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation whether capitalized or not [section 2(26)(c)];
- (d) any distribution by a company to its shareholders on the reduction of its capital, to the extent to which the company possesses accumulated profits whether such profits have been capitalized or not [section 2(26)(d)];
- (e) any profit remitted outside Bangladesh by a company not incorporated in Bangladesh under the Companies Act, 1994 [section 2(26)(dd)];
- (f) any distribution of profit of a mutual fund or an alternative investment fund [section 2(26)(ddd)];
- (g) any payment by a private company of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company, in either case, possesses accumulated profit, but does not include -
 - (i) a distribution made in accordance with section 2(26)(c) or (d) in respect of any share including preference share for full cash consideration, or redemption of debentures or debenture-stock, where the holder of the share or debenture is not entitled in the event of liquidation to participate in the surplus assets;
 - (ii) any advance or loan made to a shareholder in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;
 - (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as dividend within the meaning of section 2(26)(e) to the extent to which it is so set off.
- (iv) any bonus share issued by a company [section 2(26)(e)].

Exclusion from total income:

- (a) Cash dividend is exempted up to Tk. 25,000 [Sixth Schedule, Part A, Para 11A];
- (b) Income from a mutual fund or a unit fund is exempted up to Tk. 25,000 [Sixth Schedule, Part A, Para 22A].

Tax deducted at sources: Tax on cash dividend will be deducted at following rates:

Type of assessee	Residential status	TDS rates
Company	Both resident and non-resident	20%
Person other than company	Resident and non-resident Bangladeshi	10% if he has e-TIN, otherwise 15%
	Non-resident foreigner	30%

Grossing-up: Yes. However, it is important to know the rate of TDS before grossing up.

Illustration:

Mr. Rolex is a non-resident foreigner and received Tk. 7,000 as dividend from a Public Limited Company incorporated in Bangladesh. Here, rate of TDS was 30% and thus, after grossing up, the amount of gross dividend will be Tk. 10,000 ($7,000 \times 100/70$).

10.3 Interest Income other than interest on securities

All interest income other than those considered in 'Interest on Securities' are considered under this category. All possible sources of income, exemption limit and TDS rates are given in the table below:

Sources of Interest income	TDS rate	Exemption
1. Interest on savings / Fixed deposits from a Bank, co-operative bank, non-banking financial institution, leasing company, housing finance company	10% (If there is no 12 digit TIN then the rate will be 15%)	No exemption
2. Share of profit from any bank run on Islamic Principles.	10% (If there is no 12 digit TIN then the rate will be 15%)	No exemption
3. Interest on Savings Certificates: a. 5 years Bangladesh Sanchayapatra b. 3 monthly profit based 3 year Bangladesh Sanchayapatra c. Pensioners' Sanchayapatra d. Paribar Sanchayapatra	5% and it is final u/s 82C	Tax will not be deducted from interest on pensioners' savings certificate if total accumulated investment at the end of the income year at this type of savings certificate does not exceed Tk.5,00,000.
4. Interest on Post Office Savings Bank account	10%	No exemption
5. Interest on Non-Resident Foreign Currency Deposit Account	Nil	Fully exempted
6. Interest on DPS run by a commercial Bank and approved by the government.	10% (If there is no 12 digit TIN then the rate will be 15%)	Only interest on Govt. approved DPS is tax free as per SRO.
7. Interest on Wage Earners' Bond.	Nil	Tax free As per 6 th schedule(Part-A) Para-24A
8. US Dollar Premium Bond	Nil	
9. US Dollar Investment Bond	Nil	
10. Euro Premium Bond	Nil	
11. Euro Investment Bond	Nil	
12. Pound sterling Premium Bond	Nil	
13. Pound sterling Investment Bond	Nil	

Grossing up: Grossing up is important for interest income across items 1, 2, 3, 4, 5, 7 and 8 where TDS is applicable. It is not required for other 3 items (6, 9 & 10) which is fully exempted from tax and thus no tax is deducted at source.

Illustration

Let's assume that Mr. Arshad has reported interest income from the following sources for the year ended June 30, 2018. Compute grossed up income.

- Interest on fixed deposit Tk. 18,000.
- Interest on savings account Tk. 9,000
- Share of profit from Islami Bank Bangladesh Limited Tk. 13,500
- Interest on savings certificate Tk. 9,500
- Interest on Post Office Savings Bank Tk. 9,000

- vi) Interest on Wage Earner's Development Bond Tk. 4,750
- vii) Interest on Non-Resident Foreign Currency Deposit Account Tk. 10,000
- viii) Interest on Govt. approved DPS Tk. 5,000
- ix) Interest on US Dollar Premium Bond Tk. 6,000
- x) Interest on US Dollar Investment Bond Tk. 8,000

Computing grossed up income

Sources of interest income	TDS rate	Formula	Grossed up income
Interest on fixed deposit	10%	Tk. 18,000/1-0.1	Tk. 20,000
Interest on savings account	10%	Tk. 9,000/1-0.1	Tk. 10,000
Share of profit from IBBL	10%	Tk. 13,500/1-0.1	Tk. 15,000
Interest on savings certificate	5%	Tk. 9,500/1-0.05	Tk. 10,000
Interest on Post Office Savings Bank	10%	Tk. 9,000/1-0.1	Tk. 10,000
Interest on Wage Earner's Development Bond	Fully Exempted	N/A	N/A
Interest on Non-Resident Foreign Currency Deposit Account	Fully Exempted	N/A	N/A
Interest on Govt. approved DPS	Fully Exempted	N/A	N/A
Interest on US Dollar Premium Bond	Fully Exempted	N/A	N/A
Interest on US Dollar Investment Bond	Fully Exempted	N/A	N/A

10.4 Royalty

As per section 2 (56) of ITO 1984, royalty means consideration (including any lump sum consideration but excluding any consideration which is classifiable as income of the recipient under the head "capital gains") for -

- (a) transfer of all or any rights, including the granting of a license in respect of a patent, invention, model, design, secret process or formula, or trade mark or similar property;
- (b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret process or formula, or trade mark or similar property;
- (c) the use of any patent, invention, model, design, secret process or formula, or trade mark or similar property;
- (d) the imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill;
- (e) the transfer of all or any rights, including granting of a license, in respect of any copyright, literary, artistic or scientific work, including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for sale, distribution or exhibition of cinematograph films;
- (f) the rendering of any services in connection with any of the aforesaid activities

However, section 36, gives the guideline of how income from royalties, literary works, etc. can be allocated among different income years depending on the time used for completing the works. Briefly, the guideline is as follows:

Time taken to complete the work	Allocation on an equal basis among the income years
Less than 12 months	the income year in which it is received
More than 12 but less than 24 months	the income year in which it is received and the immediately preceding income year
More than 24 months	the income year in which it is received and the two immediately preceding income years

Tax deducted at sources on royalty income

If the royalty is paid by the government or any other authority, corporation or body, company (including banking and insurance company), or any co-operative bank or any registered NGO, 10% or 12% (depending on the base amount) tax will be deducted at source under section 52A (1) and such amount as deducted will be considered as final payment of tax liability as per section 82C.

Thus, grossing up is required if royalty income is received after TDS.

Illustration

Let's assume that Mr. Bhowmik has received a net amount of Tk. 90,000 as royalty income from the government during the income year 2017-18. He has taken a total of 18 months to complete the work. Thus, royalty income may be allocated between this year and the immediate preceding year after grossing up as follows:

Grossed Up Income: $\text{Tk. } 90,000 / 1 - 0.1 = \text{Tk. } 100,000$

This income will be allocated as follows:

Income year 2015-16: Tk. 50,000

Income year 2016-17: Tk. 50,000

10.5 Fees for technical services

Fees for technical services means any consideration (including any lump sum consideration) for rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient, or consideration which would be income of the recipient classifiable under the head salaries [section 2(31)].

Tax deducted at sources on fees for technical services

If the fees for professional or technical services is paid by the specified persons as mentioned at section 52AA (2), 10% or 12% tax to be deducted at source based on the base amount under section 52AA. However the rate would be 50% higher if the recipient does not have any 12 digit TIN. Grossing up is required to report gross income.

Illustration:

Let's assume that Soft Tech Solutions received Tk. 90,000 as technical fee from BRTA during the year. As the income was generated from a government authority, tax has been deducted at source @ 10% (assuming they have 12 digit TIN) and thus the gross income to be reported by Soft Tech Solutions would be Tk. 100,000 ($\text{Tk. } 90,000 / 1 - 0.1$).

10.6 Income from letting of factory building along with machinery

Income from letting of machinery, plant or furniture belonging to the assessee and also building inseparable from the mentioned assets is taxable as income from other sources

10.7 Deemed income under different sub-sections of section 19

Section	Income to be shown under the head 'Income from other sources'
19(1)	Unexplained credits Any sum credited in the books of an assessee maintained for any income year and the assessee offers no explanation about the nature and source thereof, or the explanation offered is not satisfactory

19(2)	Unexplained investments Where the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the DCT finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income and the assessee offers no explanation about the excess amount or the explanation offered is not satisfactory
19(3)	Unexplained expenditure Where the assessee has incurred any expenditure and he offers no explanation about the nature and source of the money for such expenditure, or the explanation offered is not satisfactory
19(4)	Unrecorded investments Where, in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of fund for the investments, or the explanation offered is not satisfactory
19(5)	Unrecorded money, jewellery etc. Where, in the financial year immediately preceding the assessment year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of fund for the acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered is not, in the opinion of the Deputy Commissioner of Taxes, satisfactory
19(8)	Purchase of assets at a price lower than the fair market value Where any assets, not being stock-in-trade or stocks, and shares, are purchased by an assessee from any company and the Deputy Commissioner of Taxes has reason to believe that the price paid by the assessee is less than the fair market value thereof, the difference between the price so paid and the fair market value
19(9)	Salami or premium for granting leases Where any lump sum amount is received or receivable by an assessee during any income year on account of salami or premium receipts by virtue of any lease, such amount received
19(10)	Goodwill money or compensation Where any amount is received by an assessee during any income year by way of goodwill money or receipt in the nature of compensation or damages for cancellation or termination of contracts and licenses by the Government or any person, such amount received
19(11)	Benefit or advantage on account of cancellation of indebtedness Where any benefit or advantage, whether convertible into money or not, is derived by an assessee during any income year on account of cancellation of indebtedness the money value of such advantage or benefit However the law will not be effective in case of loan or interest waived by any authority as prescribed at proviso of this sub-section.

19(12)	Managing agency commission Any managing agency commission including compensation received during any income year by an assessee for termination of agencies or any modification of the terms and conditions relating thereto
19(13)	Winning from lotteries, crossword puzzles etc. Any amount received by an assessee during any income year by way of winning from lotteries, crossword puzzles, card games and other games of any sort or from gambling or betting in any form or of any nature whatsoever Important Tax will be deducted at sources on such income @ 20% as per section 55 and this will be considered as final settlement of tax liability as per section 82C.
19(21)	Unpaid loan Where any sum claimed or shown to have been received as loan or gift by an assessee otherwise than by a bank transfer, the amount so received shall be deemed to be the income of the assessee for the income year in which such loan or gift was received and shall be classifiable under the head "income from other sources". However, where the loan referred to in section 19(21) is paid back in a subsequent income year, the amount so paid shall be deducted in computing the income in respect of that subsequent year. A loan shall not be deemed to be an income if the loan is taken from a banking company or a financial institution. A loan or gift received by an assessee being an individual shall not be deemed to be the income if the aggregate amount of such loan or gift received in an income year does not exceed Tk.5,00,000/ or the loan or gift received from spouse or parents of the assessee and a banking channel is involved in the process of such loan or gift.
19(24)	Disclosing investment in equity of an unlisted company Where an assessee, being a private limited company or a public limited company not listed with a stock exchange, receives its paid up capital by issuing shares, the amount so received as increased paid up capital, not being received by crossed cheque or bank transfer
19(27)	Purchase or hire of car at a price exceeding 10% of paid up capital together with reserve and accumulated profit Where an assessee, being a company, purchases directly or on hire, one or more motor car or jeep and value of any individual motor car or jeep exceeds 10% of its paid up capital together with reserve and accumulated profit, then fifty percent of the amount that exceeds such ten percent of the paid up capital together with reserve and accumulated profit.
19(29)	Building construction material if purchased on credit but not paid back within 2 year Where an assessee, other than real estate company, purchases on credit any building construction material, the sum or any part thereof which has not been paid back within 2 years from the end of the income year shall be classifiable under the head "income from other sources"
19(31)	Showing tax free income or income where reduced tax rate is applicable at return u/s 93 or at revised return u/s 78 Where an assessee, files a revised return or amended return u/s 78, 82BB or 93 and shows in such revised return or amended return any income that is subject to tax exemption or a reduced tax rate, so much of such income as exceeds the amount shown in the original return shall be deemed to be the income classifiable under the head "income from other sources".

10.8 Allowable deductions

As per section 34, followings are the allowable deductions in case of computing income from other sources as per section 33.

- (1) Interest paid on money borrowed for the purpose of acquisition of shares of a company. Interest payable outside Bangladesh on which tax has not been paid and from which tax has not been deducted at source shall not, however, be admissible deduction.
- (2) Any expenditure, not being capital expenditure or personal expenses, spent solely for the purpose of making or earning the relevant income.
- (3) Where income from other sources is derived from letting on any machinery, plant or furniture which is inseparable with factory building, allowance for repairs, insurance premium, depreciation and obsolescence allowance are admissible in the determination of income from business under section 29(1) (vi), 29(1) (vii), and 29(1) (xi), respectively as if the income from such letting on hire were income from business or profession.

Provided that the provisions of section 19(16) shall also be applicable for the determination of any profits where the sale proceeds of such machinery, plants, furniture or building exceeds the written down value thereof.

10.9 Inadmissible deductions

As per section 34(4), following two expenses are not admissible:

- (a) Any interest chargeable under the Ordinance which is payable outside Bangladesh on which tax has not been paid and from which tax has not been deducted at source under section 56; or
- (b) Any payment which is chargeable under the head "salaries" if tax has not been paid thereon or deducted there from under section 50.

Worked examples

Worked example 1

Mr. Abdur Rahman has reported the following income classifiable under the head 'Income from Other Sources' for the income year ended on June 30, 2018. Compute total income of Mr. Rahman.

(1) Dividend from a Private Limited Company	9,000
(2) Interest on Fixed Deposit	5,400
(3) Interest on Savings Certificate	19,000
(4) Interest on Post Office Savings Bank account	1,800
(5) Remuneration for exam script evaluation and invigilation	1,000
(6) Prize bond lottery	25,000
(7) Income from sale of fish of pond	1,000
(8) Sale of forest tree and bamboo	1,500
(9) Income from copyright	4,000
(10) Honorarium as director	10,000
(11) Gift from marriage anniversary	5,000
(12) Income from license	2,000

During the year he has purchased jewellery of Tk. 125,000 the source of which has not been explained to the DCT. During the year he has paid Tk. 200 as license renewal fee and Tk. 800 as interest on loan taken to purchase the shares of private limited company.

Solution 1

Assessee: Mr. Abdur Rahman
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Income from other sources (sec - 33):

1. Dividend from Pvt. Ltd. Co. (9,000/1-0.1)	10,000	
2. Interest on fixed deposits (5,400/1-0.1)	6,000	
3. Interest on savings certificate (19,000/1-0.05) [final u/s 82C]	20,000	
4. Interest on Post Office Savings Bank (1,800/1-0.1)	2,000	
5. Remuneration for exam script evaluation	1,000	
6. Prize bond lottery [minimum tax u/s 82C]	25,000	
7. Income from sale of fish of pond	1,000	
8. Sale of forest tree and bamboo	1,500	
9. Income from copyright	4,000	
10. Honorarium as director	10,000	
11. Gift from marriage anniversary	5,000	
Less: Exempted (note-2)	<u>5,000</u>	-
12. Income from license	2,000	
13. Unexplained investment at jewellery u/s 19	<u>125,000</u>	
		<u>2,07,500</u>
Less: Allowable deductions:		
License renewal fee	200	
Interest on loan	<u>800</u>	<u>1,000</u>
Total		<u>2,06,500</u>

Notes:

1. Assuming copyright has been received from an individual, where no TDS is applicable.
2. Income from marriage anniversary is a gift not income.

Worked example 2

Mr. Joarder Hossain has reported the following incomes for the income year 2017-18 classifiable under the head 'income from other sources'. Compute taxable income of Mr. Hossain.

1. Dividend from ICB Mutual Fund (gross amount)	30,000
2. Profit on Islami Bank Mudaraba Savings Scheme	2,700
3. Interest on savings certificate (gross)	30,000
4. Income from royalty of a book (time of completion – 10 months)	2,000
5. Prize of winning crosswords (no tax was deducted)	2,000
6. Income from letting out household machineries	1,000
7. Sale of forest timber	1,500
8. Income from a newspaper for column writing	5,000
9. Income from unused leased land	2,000
10. Honorarium for attending a symposium	30,000
11. Income from private tuition in a Coaching Center	10,000
12. Royalty income from a publisher	1,800

During the year he spent Tk. 200,000 on a party in Hotel Radisson, the source of expenditure remained

unexplained to the DCT. He has also visited Singapore incurring a total cost of Tk. 100,000 and purchased a Diamond set of Tk. 200,000 for his wife for which the source of the money was not satisfactory to the DCT. During the year he has paid Tk. 2,000 as commission for collecting the dividend and Tk. 8,000 as interest on loan taken to purchase ICB mutual fund.

Solution 2:

Assessee: Mr. Joarder Hossain

Income year: 2017-18

Assessment year: 2018-19

Computation of total income

Income from other sources (sec - 33):

1.	Dividend from ICB Mutual Fund	30,000		
	Less: Exempted – Up to Tk. 25,000	<u>25,000</u>	5,000	
2.	Profit on Islami Bank Scheme (2,700/1-0.1)		3,000	
3.	Interest on savings certificate [minimum tax u/s 82C]		30,000	
4.	Income from royalty of a book		2,000	
5.	Prize of winning crosswords		2,000	
6.	Income from letting out household machineries		1,000	
7.	Sale of forest timber		1,500	
8.	Income from newspaper column writing		5,000	
9.	Income from unused leased land		2,000	
10.	Honorarium for attending a symposium		30,000	
11.	Income from private tuition in a coaching center		10,000	
12.	Royalty income from publisher (1,800/1-0.1)		2,000	
13.	Unexplained investments u/s 19:			
	Party in hotel	200,000		
	Travel to Singapore	100,000		
	Purchase of diamond jewellery	<u>200,000</u>	<u>5,00,000</u>	
				5,93,500
Less: Allowable deductions:				
	Commission for collecting dividend		2,000	
	Interest on loan		<u>8,000</u>	<u>10,000</u>
	Total			<u>5,83,500</u>

Self-assessment questions

- What is meant by "dividend" under the Income Tax Ordinance 1984?
- What are the items assessable as "income from other sources" under the Ordinance?
- Mr. Joynal Akand has earned the following incomes for the year 2017-18.

Dividend from preference shares of a Public Limited Company	45,000
Dividend from ICB Mutual Fund	18,000
Income from underwriting shares of a Company	30,000
Income from mooring terminal	40,000
Interest on Savings Bank Deposit	27,000
Honorarium received as a director to be a member of the Board	10,000
Prize of winning Red Crescent lottery	36,000
Income from betting/housie	48,000

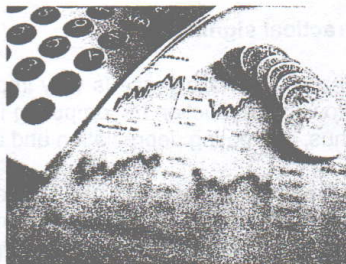
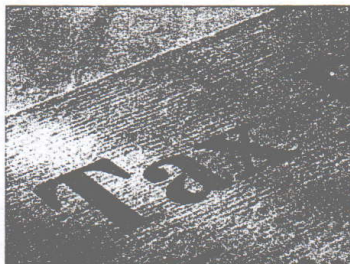
Interest on loan given to a friend	15,000
Income from consultancy work not related to his profession	40,000
Income from participating in a training program	20,000
Income from birthday party	50,000
Income from royalty of a book [which took two years to write the book]	90,000

During the year he spent Tk. 200,000 to purchase a piece of land, Tk. 90,000 to purchase a motorcycle and the explanation given regarding the source of expenditure was unsatisfactory to the DCT. Through investigation, the DCT has also identified an FDR of Tk. 500,000 in a local bank, source of which has also remained explained.

He has also visited India incurring a total cost of Tk. 100,000 and purchased a Diamond set for Tk. 100,000 for his wife for which the source of the money was also unexplained. During the year he has paid Tk. 1,500 as commission for collecting the dividend. His other expenditures during the year are as follows:

Purchase of books and magazine	15,000
Donation to President's Relief Fund	30,000
Contribution to a deposit pension scheme	80,000
Purchase of a cow for Eid ul Azha	15,000
Purchase of a Laptop	130,000
Purchase of shares from secondary market	200,000

Compute total income and tax liability of Mr. Joyanal Akand for the assessment year 2018-19.



Chapter 11

Depreciation allowances

Contents

Introduction

Examination context

Topic list

11.1	Principles of depreciation allowance
11.2	Depreciation allowance for different heads of income
11.3	Depreciation allowance on assets used for agricultural purpose
11.4	Depreciation allowance on assets used in business or profession
11.5	Types of depreciation allowance
11.6	Normal depreciation allowance
11.7	Initial depreciation allowance
11.8	Other depreciation allowance
11.9	Investment allowance: section 29(1) (ix) & (x)
11.10	Written down value of assets for the purpose of depreciation allowance: (Para 11(5) (a) & (b) and 11(6) (a) of the 3rd Schedule)
11.11	Disposal of assets and treatment of gain or loss thereof (Para 10, 3rd Schedule)
11.12	Limitation in respect of depreciation allowance (Para 9, Third Schedule)
11.13	Depreciation: Whether compulsory or optional?

Worked examples

Introduction

Learning objectives

- Explain depreciation allowance.
- Compute depreciation allowance,
- Define balancing charge and capital gain.
- Identify different types of depreciation allowances.
- Differentiate accounting depreciation and tax depreciation.
- Identify different rates of accelerated depreciation for different assets.
- Define written down value and its application at acquisition and disposal of assets.
- Explain gain and losses of assets in disposal.

Practical significance

Depreciation allowance is very important in computing income from business and profession. It is an allowable deduction in computing income from agriculture and income from business and profession. Thus, computing depreciation and understanding its implication is very significant.

Accounting depreciation and tax depreciation may not be the same. If it is not same then it generates deferred taxation. And it is very important for professional accountants to practice deferred taxation. This chapter presents different types of depreciation allowances, investment allowance and other related topics.

It also presents a definition of written down value with the application of gain and loss on disposal of assets. It also presents different exceptions to the common rule.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the computation of depreciation allowance is one of the important issues for determining tax liability? Can you determine the taxable income under the heads 'income from agriculture' and 'income from business and profession' after allowing tax depreciation allowance?

Working context

In practice, as the accountants are sometime required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total taxable income for any income year. Before advising the clients, accountants should have the clear concept relating to the admissible and inadmissible expenses so that they can deduct or add the expenses in determining the taxable income.

Syllabus links

The topics covered in this chapter are very important for computing taxable income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define depreciation allowance.
- Compare depreciation allowance and investment allowance.
- Define written down value, balancing charge, industrial undertaking and capital gain.
- Presents different rates of depreciation for different types of assets.
- Explain rates of depreciation for plant, machinery, ships and other exceptional assets.
- Understanding the difference between accounting depreciation and tax depreciation.
- Define written down value and its application at acquisition and disposal of assets.
- Explain gain and loss of assets in disposal.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to computation of income under the heads 'income from agriculture' and 'income from business or profession'.

11.0 DEPRECIATION ALLOWANCE

Section overview

- ➔ Depreciation is allowed on cost but investment allowance is over and above cost and depreciation allowance.
- ➔ Any Government subsidy or any grant from any authority received for the purchase is to be deducted from cost.
- ➔ Sale value of motor car costing more than Tk. 25 lakhs is to be scaled down in proportion to Tk. 25 lakhs limit and the same with assets used partly for business or profession and partly for private purpose of the assessee.
- ➔ Full depreciation is allowed in the year of purchase and none is allowed in the year of disposal of asset.
- ➔ Sale value exceeding original cost is capital gain and should be taxed accordingly.
- ➔ Depreciation is calculated on reducing balance method (WDV) on all assets other than accelerated depreciation or on ships and vessel where cost is used.
- ➔ Balancing charge is the revenue gain and should be taxed separately.
- ➔ Accounting depreciation and tax depreciation are different and it creates deferred taxes.

11.1 Basics of depreciation allowances

Besides various expenditure allowed under section 29 in arriving at the profit or loss on business or profession in an income year, allowances are also given for depreciation of capital assets within prescribed rules and at prescribed rates.

Normally accountants charge depreciation on fixed assets other than lands in calculating profit or loss of business or profession periodically. This is a normal wear and tear of fixed asset caused by use, defluxion of time or obsolescence. The rates and method of depreciation depend on the particular accounting policy followed by the assessee.

In calculating accounting depreciation, accountants should not consider what tax authorities allow and tax authorities also do not consider accounting depreciation in computing depreciation allowed under tax laws. It may be that accountant has not charged any depreciation on fixed assets or charged whole of a particular fixed asset in a year, but to the tax man, it is immaterial since he would add back accounting depreciation and deduct tax depreciation in his assessment process.

Some basic rules or concepts used in the calculation and granting of depreciation allowances are stated below:

- (i) It is allowed on fixed assets other than land i.e. buildings, plant and machinery, furniture and fittings, equipment etc.
- (ii) Assets must be used in the relevant income year in business or profession. It may be used for the whole year or for just one day in the year. The allowance is given for the whole year without time apportionment. However, it would be on proportionate basis when assets or some of these are used for private purpose and business purpose.
- (iii) Ownership of the assets must be with the concerned assessee in the income year. This condition overrides prima facie that of use when in the case of operating lease, or any other arrangement of hire purchase purpose, the lessor retains the ownership. He is thus allowed full tax depreciation though the assets have been used by the assessee.

- (iv) It is obligatory on the part of the assessee to furnish the prescribed particulars in respect of depreciation claim (Rule 41). If the prescribed particulars are not furnished, the DCT may even refuse to grant any allowance for depreciation. However, where the particulars furnished are incomplete or inaccurate he cannot decline to grant allowance where he should call for further information to complete his own depreciation allowance.
- (v) Aggregate depreciation allowed shall not exceed cost and the law deals with the subject of cost elsewhere.
- (vi) No depreciation is allowed in the year the asset is sold, discarded or demolished even when it was used for major or most part of the year. However, balancing allowances is allowed in that year when WDV of the asset is greater than the proceeds.
- (vii) Third Schedule prescribes different rates of depreciation allowances for different classes of assets. On ocean going ships and vessels the rate of depreciation is based on actual cost and accelerated depreciation on plant and machinery is also based on cost not WDV, in all other cases, it is based on written down value (WDV) of the asset.
- (viii) Cost of motor vehicle used in the business or profession is restricted up to Tk. 25 Lakhs for the purpose of depreciation allowance calculation.
- (ix) No depreciation is allowed on assets before the commencement of business i.e. commercial production.
- (x) While acquiring the asset, the assessee receives any capital grant or Government subsidy or any assistance from any other authority or person such amount shall be excluded from the acquisition cost for the calculation of depreciation allowance.
- (xi) Fluctuation in the foreign exchange rate is given effect to determine the cost base of any asset acquired with money borrowed and payable in foreign currency.
- (xii) Depreciation is not treated as an expense unlike the matching of cost with revenue by the accountants. However, it is given as a specific case for the diminution in capital assets used in business or profession. Since, it is not treated as a cost by the tax people, tax profit or loss is calculated first without having regard to depreciation allowance.

If there is any profit, depreciation is set off against that. If not or if insufficient to absorb the whole, the balance is and can be carried forward indefinitely as unabsorbed depreciation. But in case of loss, it can be carried forward only for six years and when cannot be set off within that, is regarded a capital loss. This facility of carry forward of unabsorbed depreciation is extended to all tax holiday or exempted enterprises when however, they cannot carry forward their business losses beyond the holiday or exempt period.

11.2 Depreciation allowance for different heads of income

Income Tax Ordinance, 1984 prescribes depreciation allowances for fixed assets used in different heads of income as follows:

- a) Agricultural income
- b) Income from business or profession

11.3 Depreciation allowance on assets used for agricultural purpose

Depreciation allowances on fixed assets used for agricultural purposes are allowed at prescribed rates as given in Third Schedule. The schedule is produced below:

Third Schedule
[Para 1]

Sl. No.	Classification of irrigation or protective work or other capital assets.	Rate/percentage of the written down value, except as otherwise indicated.	Remarks
1	2	3	4
1)	Pucca buildings	10	
2)	Kutcha and pucca buildings	15	
3)	Kutcha buildings	20	
4)	Temporary structure	-	No rate is specified; renewal will be allowed as revenue expenditure
5)	Pucca walls	5	
6)	Fencing of substantial material	10	
7)	Tube-well	15	
8)	Tanks	10	
9)	Pucca irrigation channel	15	
10)	Kutcha irrigation channel	20	
11)	Kutcha irrigation wells	33.33	
12)	Pucca irrigation wells	5	
13)	Bullock drawn iron implements	15	
14)	Bullock drawn wooden or leather implements and other small hand/implements.	25	
15)	Weighing machine	10	
16)	Tractors and oil engines and thin implements.	15	
17)	Power pumping machinery	20	
18)	Factory made cart of iron material with rubber tire	15	
19)	Country cart	20	
20)	Steam engine	10	
21)	Workshop tools	15	
22)	General (machinery, implements, plants and other assets) not provided for above specifically.	10	

11.4 Depreciation allowance on assets used in business or profession

In computing the profits and gains from business or profession, allowance is admissible for depreciation on building, machinery, plant, furniture owned by the assessee and used for the purpose of his business or profession. To claim depreciation allowance, Para 2 of Third Schedule specifies the following conditions:

- (1) In computing profits and gains from business or profession, an allowance for depreciation shall be made in the manner hereinafter provided in respect of any building, machinery, plant or furniture owned by an assessee or bridge or road or flyover of a physical infrastructure undertaking and used for the purposes of business or profession carried on by him.
- (2) Where any such building, machinery, plant or furniture or bridge or road or fly over of a physical infrastructure undertaking is not wholly used for the purposes of the business or profession, the allowance under sub-paragraph (1) shall be restricted to the fair proportional part of the amount which would be admissible if such building, machinery, plant or furniture were wholly so used.
- (3) No allowance under this paragraph shall be made unless-

- (a) at the time of filing a return of total income such particulars as may be prescribed and such further information or documents as the Deputy Commissioner of Taxes may require, are furnished; and
- (b) such building, machinery, plant or furniture or bridge or road or flyover of a physical infrastructure undertaking has been so used during income year.

11.5 Types of depreciation allowance: As per Third Schedule of IT Ordinance 1984, depreciation allowances may be classified as under:

Reference	Types of allowances
Para 3, Third Schedule	Normal depreciation allowance
Para 5A, Third Schedule	Initial depreciation allowance
Para 7B, Third Schedule	Accelerated depreciation allowance on machinery and plant
Para 8, Third Schedule	Special depreciation allowance on ships

11.6 Normal depreciation allowance

Normal depreciation allowance is allowed at the following rates that may be amended by the Board from time to time by notification in the official Gazette. However, no allowance under this paragraph shall be made for a leasing company on such machinery, plant, vehicle or furniture given to any financial lease.

SL. No.	Classification of assets	Rate/percentage of the written down value, except as otherwise indicated	Remarks
1	2	3	4
1.	(a) Buildings (general)	10	The allowance is to be calculated on the original costs.
	(b) Factory buildings	20	
2.	(a) Furniture and fittings	10	
	(b) Office equipment	10	
3.	Machinery and plant:		
	1. General rate	20	
	2. Special rate:		
	(a) Ships		
	(i) Ocean going ships (new)	12	
	(ii) Ocean going ships (second hand), age at the time of purchase -		
	- less than 10 years	12	The allowance is to be calculated on the original costs.
	- 10 years or more	24	
	i) Inland ships including steamers, motor vessels, sails, tug boats, iron or steel flats for cargo boats, wooden cargo boats, motor launches and speed boats	24	
	(b) (i) Batteries, X-Ray and electro-therapeutic apparatus and accessories thereto;	20	
	(ii) Machinery used in the production and exhibition of cinematographic films;	20	
	(iii) Motor vehicles all sorts not plying for hire;	20	
	(iv) Motor vehicles all sorts plying for hire;	24	
	(v) Computer and computer equipment;	30	
	(v) Bangladeshi made computer software	50	
	(vi) Imported computer software	10	

(c) (i) Professional and reference books;	30
(ii) Aircraft, aero-engines and aerial photographic apparatus;	30
(iii) Moulds used in the manufacture of glass or plastic goods or concrete pipe.	30
(d) Mineral oil concerns –	
(i) Below ground installations;	100
(ii) Above ground installations, that is to say, portable boilers, drilling tools, well head tanks and rigs.	30
(e) physical infrastructure undertaking-	
(i) Bridge	2
(ii) Road	2
(iii) Fly over	2
(iv) Pavement runway, taxiway	2.5
(v) Apron, tarmac	2.5
(vi) Boarding bridge	10
(vii) Communication, navigation aid	5

Note: Any asset that falls under the description 'Machinery and plant' having useful life not more than one year, allowance is not allowed though the cost of renewal or replacement thereof shall be allowed as a revenue expenditure. (Para 5, Third Schedule)-

11.7 Initial depreciation allowance

This depreciation allowance is applicable to any building newly constructed or any machinery or plant installed in Bangladesh after the thirtieth day of June, 2002 at the rates mentioned below:

(a) In the case of building	10% of the cost thereof to the assessee
(b) In the case of machinery or plant other than ships or motor vehicles not plying for hire	25% of the cost thereof to the assessee

Notes:

- (1) Initial depreciation allowance will not be applicable in case of –
 - (a) any motor vehicle not plying for hire, and
 - (b) any machinery or plant which has previously been used in Bangladesh.

11.8 Other depreciation allowance

Para 7B and 8 of the Third Schedule have also granted some depreciation allowances which do not form part of the normal depreciation allowance in sec 29

These are:

(1) Accelerated depreciation allowance on machinery and plant (Para 7B)

Under this accelerated depreciation is granted on plant and machinery used in an industrial undertaking at varying rates depending on the area as specified by NBR, in which such undertaking is set up to the fulfillment of the following:

- (a) The machinery or plant is not an office appliance or road transport vehicle.
- (b) The asset is new which means not previously been used in Bangladesh (second hand or reconditioned asset would not qualify).
- (c) The industrial undertaking must be set up between 1 July, 2014 and 30 June, 2019 (both days inclusive)

- (d) The industrial undertaking is owned and managed by a Bangladeshi company or a body corporate formed under any law and having its registered offices in Bangladesh.
- (e) The allowance is given to the class of industries as notified by NBR.
- (f) The allowance shall be given from the year of commercial production.
- (g) The particulars as required for the purpose of claiming the accelerated depreciation allowance have been furnished.
- (h) Application complete in all respects, is made to NBR within 6 months from the end of the month of commercial production together with a declaration that the undertaking is neither enjoying tax holiday nor has made any application thereof to NBR. (Rule 40)
- (i) The assets enjoying accelerated depreciation will not be eligible for any other depreciation under the Income Tax Ordinance.

Rate of accelerated depreciation allowance:

a.	For the first year in which the undertakings starts commercial production:	50% of the actual cost of plant and machinery to the assessee
b.	For the second year	30% of the actual cost of plant and machinery to the assessee
c.	For the third year	20% of the actual cost of plant and machinery to the assessee

(2) Special depreciation allowance on ships (Para 8)

The allowance is admissible on inland passenger vessel, fishing trawler and ships ordinarily not paying in inland water, owned by the assessee and brought into use for the first time in Bangladesh on any day between 1st July, 1982 and 30th June 1995 (both days inclusive) at the following rates:

(i)	for the first year	40 percent of the original cost;
(ii)	for the second year	30 percent of the original cost;
(iii)	for the third year	30 percent of the original cost;

The assets enjoying special depreciation will not be eligible for any other depreciation under the Income Tax Ordinance. However, above provision has become obsolete since not extended after 1995.

11.9 Investment allowance: section 29(1) (ix)

The allowance is admissible to inland passenger vessel and fishing trawler, which are entitled to special depreciation, at the rate of 20 percent of the cost for the year in which those are put to use for public utility.

11.10 Written down value of assets for the purpose of depreciation allowance: (Para 11(5) (a) & (b) and 11(6) (a) of the Third Schedule)

"Written down value" means –

(a)	In the case of assets acquired in the income year,	Actual cost to the assessee.
(b)	In the subsequent year or years	Actual cost to the assessee less all depreciation allowed under Income Tax Ordinance 1984 in respect of the earlier year or years.

Note: In the case of motor vehicles, being passenger vehicles or sedan cars, not plying for hire, the actual cost to the assessee shall be deemed not to exceed Tk.20,00,000/.

11.11 Disposal of assets and treatment of gain or loss thereof (Para 10, Third Schedule)

Where in any income year, building, machinery or plant is disposed of by an assessee-

- (a) No depreciation allowance shall be allowed in respect of year of disposal.
- (b) When the sale proceeds exceed the written down value, the excess amount limited up to the difference between the original cost and the written down value, shall be income of the year from business or profession.

The principle underlying the provision is that the depreciation allowed in the past as expenditure in determining income shall be treated as income in the year of sale when the sale proceeds exceed the written down value.

- (c) When the sale proceeds are less than the written down value of the assets, deficit shall be expenditure deductible from the profits or gains of business or profession of that year.
- (d) When sale proceeds exceed the original cost, difference between original cost and WDV i.e. depreciation allowances previously granted would be business profit and amount exceeding cost would be assessed under sec. 31 as capital gain.

11.12 Amortization of license fees—[Para-10A of Third Schedule]

- (1) Where an assessee, being a resident company, paid any sum as license fees before or after the first day of July, 2012 wholly and exclusively for the purpose of obtaining a permission from any authority authorized by the government applicable for two or more years to run a business, the assessee shall be allowed a deduction of an amount proportionate to such years as such deduction shall continue till the last year of the period for which the license was granted.
- (2) For the purpose of this paragraph, license fees means spectrum assignment fees, GSM license fees, license acquisition fees or license renewal fees paid by a cellular mobile phone operator or any other license fee paid by any other company engaged in providing specialized services, if such license is integral part to the operation of the company..

11.13 Limitation in respect of depreciation allowance (Para 9 of Third Schedule)

- (1) The aggregate of the allowances for depreciation allowed in respect of any asset, shall not exceed the original cost of the asset.
- (2) Where full effect cannot be given to depreciation allowances in the year in which it is admissible there being no income chargeable for that year or such income being less than the allowance admissible, then, subject first to carrying forward of the loss, if any, under section 38, the allowances or the part thereof to which effect has not been given shall be added to the amount of the allowance for the following year or, if no allowance is admissible for such following year, shall be deemed to be allowance admissible for such year and so on for succeeding years till such time as the entire allowance on this account is adjusted against the profits.

11.14 Depreciation: Whether compulsory or optional?

Depreciation is an allowance to the assessee, not an obligation. It is optional and cannot be binding upon an assessee, as assessee can choose not to claim accounting depreciation.

Assessee's right

The assessee would not lose the right to carry forward and set off against profits of subsequent years, unabsorbed depreciation if:

- he does not carry on the same business
- he does not carry on any business
- he uses the assets not for business but for earning income assessable under other sources
- he does not use the asset at all and
- he ceases to be the owner of the asset.

Assignment of unabsorbed depreciation

The unabsorbed depreciation allowance cannot be assigned to the transferee of the business. If a business is acquired by another, the unabsorbed depreciation allowance of the previous owner becomes a capital loss and cannot be carried forward by the successor in business for set off against profits of subsequent years.

Amalgamation, mergers etc.

When a company merges with another and has unabsorbed depreciation or carried forward loss from earlier years, the right to carry them forward is lost and the transferee company being a different assessee, cannot claim to carry forward either the unabsorbed depreciation or the losses of the merged company.

Change of shareholding or the constitution of firm

Disentitlement of carry forward of loss upon a change in shareholding in a company does not apply in case of unabsorbed depreciation. Similarly change in the constitution of a firm does not disentitle the firm from unabsorbed claim.

Worked examples and solutions

Worked example 1

Company X, whose accounting year is ended on June 30 each year, has purchased a machine for Taka 20 Lakhs on 29 June, 2014 and sold the same on 1st April 2018 for Tk. 25 lakhs. Compute balancing charge and capital gain.

Solution 1

Assessment year	Rate of depreciation	Depreciation	Written down value
			2,000,000
2015-16	20%	400,000	1,600,000
2016-17	20%	320,000	1,280,000
2017-18	20%	256,000	1,024,000

Total gain: Sale proceeds – Written down value = Tk. 2,500,000 – Tk. 1,024,000 = Tk. 1,476,000

Capital gain = Sale proceeds – Original cost = Tk. 2,500,000 – Tk. 2,000,000 = Tk. 500,000

Balancing charge = Total gain – Capital gains = Tk. 1,476,000 – Tk. 500,000 = Tk. 976,000

Notes:

- Difference between sales price and original cost is capital gain to be assessed in 2018-19 assessment year.
- Balancing charge equals to depreciation allowances so far enjoyed i.e. Tk. 976,000 (400,000 + 320,000 + 256,000).

3. The company received the depreciation allowance in 2015-16 assessment year, for just buying the machine one day before its year end. Had it been 1st July, 2015, the allowance would have started from the assessment year 2016-17 i.e. corresponding income year 2015-16. Similarly, on disposal giving rise to balancing charge and capital gain, it has delayed the tax impact by one year just by completing the sale on 1st April, 2018 instead of 30 June, 2017.

Worked example 2

Company X bought a machine for Tk. 50 lakhs on 10th July, 2015 to be used in its expansion unit in Savar, Dhaka. The investment is qualified for accelerated depreciation under Third Schedule. The company sold the machine on 15 January, 2018 for Tk. 20 lakhs, The Company's year ends on 30th June. Calculate depreciation for the relevant assessment years.

Solution 2

Assessment year 2016-17

	Cost	Allowance
Machine	5,000,000	
Accelerated depreciation allowance (3 rd Schedule) (50%)	2,500,000	2,500,000
		<u>2,500,000</u>

Assessment year 2017-18

Accelerated depreciation allowance (30%)		1,500,000
Written down value		<u>1,000,000</u>

Assessment year 2018-19

Sale proceeds	2,000,000	
No depreciation in the year of disposal	nil	2,000,000
Less: WDV		1,000,000
Revenue gain from sale of machine		1,000,000

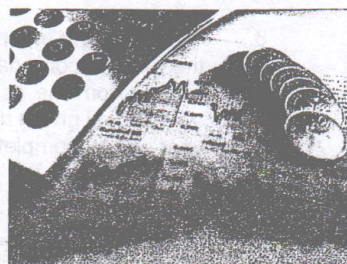
Notes:

Difference between accounting and tax profits arises mainly because of timing what accountants charge in the accounts as depreciation and what tax law allows. Since, both the way calculates on the cost as the upper limit, there would be no difference in the long run. However, after tax results of companies differ significantly from year to year or across the industry because of the taxation anomaly.

To remove this problem and to show an even after tax results year after year companies can maintain deferred taxation account in accordance with IAS 12 (Accounting for income tax).

Self-assessment questions

- 1) Enumerate different types of depreciation allowance?
- 2) What is the basic difference between depreciation allowance and investment allowance?
- 3) An asset was bought some years back for Tk. 1 million, the WDV of which was Tk. 600,000. It was sold for Tk. 400,000. What is the tax implication?



Chapter 12

Set off and carry forward of losses

Contents

Introduction

Examination context

Topic list

12.1	Introduction to set off and carry forward of losses
12.2	Set off of losses: section 37
12.3	Procedures to set off
12.4	Carry forward of business losses: section 38
12.5	Set off and carry forward of loss in speculation business: section 39
12.6	Set off and carry forward of loss under the head 'capital gains': section 40
12.7	Carry forward of loss under the head 'agricultural income': section 41
12.8	Carry forward of loss of firm and partner
12.9	Carry forward of loss of succeeded business or profession
12.10	Carry forward of loss of unabsorbed depreciation
12.11	Carry forward of loss of tax holiday undertaking: section 46A(6)
12.12	Procedures to carry forward

Worked examples

Introduction

Learning objectives

- Define set off and carry forward of losses.
- Identify areas where set off of losses is possible.
- Identify the heads of loss permissible for carry forward.
- Identify the situations when carry forward is not permissible.
- Explain maximum years when carry forward is possible.
- Differentiate carry forward of losses by individuals, firms and partners.
- Explain the carry forward of losses by undertakings enjoying tax holiday facilities.
- Illustrate the concept of set off and carry forward of losses in different situations.

Practical significance

Set off and carry forward of losses is very important and practically significant to compute total income of any year. These are the benefits enjoyed by assessee to cover up their losses before paying taxes to the government.

Set off means the coverage of loss under one head against another head in a specific year. Carry forward is the transferring of loss of a year to the succeeding year or years for coverage if set off was not possible or insufficient. Such set off and carry forward facility can be availed provided that certain conditions are fulfilled. This chapter presents such guidelines.

After carry forward, losses from any head cannot be set off against income from any other heads. And losses cannot be carried forward for unlimited period. Thus, professional accountants need clear understanding on each topic of this chapter.

Subject to some conditions, an assessee is allowed to set off and carry forward of losses. The carry forward of losses under different heads of income are varied.

You will find the details of the above issues in this chapter with some practical example.

Stop and think

Do you realize that the understanding of set off and carry forward of losses is important for computation of total income? Can you determine the total income from different heads of income after set off and carry forward of losses?

Working context

In practice, as the accountants are sometimes required to support to prepare their clients' tax returns, they need to advise the clients on how to calculate the total income for any income year. Before advising the clients, accountants should have the clear concept relating to set off and carry forward of losses in determining the total income.

Syllabus links

The topics covered in this chapter are very important for computing total income which is required for solving sample practical problems at this level.

Examination context

Exam requirements

In the examination, students may be required to:

- Understanding provisions regarding set off and carry forward of losses.
- Identify areas where set off of losses is possible.
- Identify carry forward of losses from income from agriculture.
- Identify carry forward of losses from income from business and profession.
- Identify carry forward of losses from income from speculation business.
- Identify carry forward of losses from capital gains.
- Identify carry forward of losses from income from house property.
- Identify carry forward of losses from income of a partnership firm.
- Identify the situations when carry forward is not permissible.
- Explain maximum years when carry forward is possible.
- Explain the application of unabsorbed depreciation and its impact on income from business and profession.
- Differentiate carry forward of losses by individuals, firms and partners.
- Explain the carry forward by undertakings enjoying tax holiday facilities.
- Illustrate the concept of set off and carry forward of losses in different situations.

Question practice

For question practice on these topics go to the suggested answers covering this chapter and also this manual.

Examiner's comments on how students should tackle questions

Candidates have to be prepared well for this area as this chapter consists of core concept on computation of income which is vital for calculating tax liability. Clear concept and understanding of each contents of this chapter will help candidates to resolve any problems relating to set off and carry forward of losses.

12.0 SET OFF AND CARRY FORWARD OF LOSSES

Section overview

- ➔ Loss arising in one head of income can be set off against profit arising under any other head except from, capital loss or loss on speculative business in the same year. *Business loss cannot be set off against house property income.*
- ➔ Balance of loss, if remains, can be carried forward to be set off against profit under same head for six years.
- ➔ Capital loss of Tk. 5,000 in a year cannot be carried forward and cannot be set off against profit under any other head.
- ➔ Unabsorbed depreciation brought forward together with current year's depreciation allowance forms total depreciation charge for the year.
- ➔ Unabsorbed depreciation can be carried forward indefinitely i.e. without time limit of six years.

12.1 Introduction to set off and carry forward of losses

Tax is imposed on income and thus, if loss is generated from any heads; government offers sufficient options to make the assessee well off enough so that tax may be collected. Two such options are:

- a) Set off
- b) Carry forward and then set off

Logically, set off considers only one year whereas carry forward includes subsequent year or years. As assessee have multiple sources of income, it is very common that loss will not generate from each heads. Thus losses from one head may be adjusted with income from other heads so that net figure results income and tax can be imposed on it. However, if the total income from all heads results losses, set off cannot be done practically. In such a situation, loss of one year can be carried forward to subsequent year or years for set off. This chapter presents these two issues in detail.

12.2 Set off of losses: section 37

Where, in respect of any assessment year, the net result of computation of income under any head is a loss, the assessee shall, subject to the other provisions of the Ordinance, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.

Provided that any loss in respect of any *house property income*, speculation business or any loss under the head "Capital gain" or any loss from any other source, income of which is exempted from tax shall not be so set off, but shall, excluding any loss from any other source, income of which is exempted from tax, in accordance with the provisions of the Ordinance, be set off, or be carried forward to succeeding assessment year or years for set off, against any income in respect of speculation business or any income under the head "capital gains".

Similarly any loss in respect of any income from business or profession shall not be so set off against any income from house property. **Loss at any head cannot be set-off against any income of manufacturing of tobacco products**

Further, for the purposes of this section, the Deputy Commissioner of Taxes shall in computing any loss, deduct any amount received in cash as subsidy from the Government.

12.3 Procedure to set off

Losses from one head can be set off against income from other head(s) subject to the conditions as mentioned below:

1. The loss generated from one source under a particular head can be set off against the other sources of income, if any, under the same head. For example, loss of cloth business can be set off against the income from hardware business, as both are the sources of income under the head "income from business and profession".
2. If the loss generated from a source cannot be fully set off against the income of other sources under the same head, it can be set off against the income of other heads subject to the prescribed conditions.
3. Loss generated from any speculation business can only be set off against income from any other speculation business.
4. Similarly, loss generated under the head "capital gains" can only be set off against any other "capital gains".
5. No set off of losses is allowed for any loss generated from tax exempted income
6. Loss at any head cannot be set-off against any income of manufacturing of tobacco.
7. For the purpose of set off of losses the DCT shall, in computing any loss, deduct any amount received in cash as subsidy from the government.
8. Any loss under the head "income from business or profession" cannot be set off against any income from house property.
9. In case of loss sustained by a firm under any head can be set off only against the income of the firm under any other head and not against the income of any of the partners of the firm [section 42(3)(a)]

The table produced below may be used as a short-cut guideline for set-off of losses:

Heads of income generating loss	Set off against
1. Salary[Though loss is not possible]	any head [other than income from cigarette manufacturing]
2. Interest on securities	any head[other than income from cigarette manufacturing]
3. Income from house property	any head[other than income from cigarette manufacturing]
4. Agricultural income	any head except "capital gains" and income from cigarette manufacturing.
5. Income from business/ profession	any head except income from house property, income from tobacco products manufacturing and capital gains;
6. Capital gain	income from "capital gains" only
7. Income from other sources	any head [other than income from cigarette manufacturing]
8. Speculation business	income from any other speculation business
9. Income exempted from tax	Set off not allowed

12.4 Carry forward of business losses: section 38

Where, for any assessment year, the net result of the computation of income under the head 'income from business or profession' is a loss to the assessee, not being a loss sustained in a speculation business, and such loss has not been wholly set off under section 37, so much of the loss as has not been so set off, the whole of the loss, where the assessee has no income under any other head or has income only under the head 'capital gains', shall be carried forward to the next following assessment year, and-

- (a) it shall be set off against the income, if any, from the business or profession for which the loss was originally computed if such business or profession continued to be carried on by him in the income year; and
- (b) if the loss cannot be wholly so set off, the amount of the loss not so set off shall be carried forward to the next assessment year and so on for not more than six successive assessment years.

12.5 Set off and carry forward of loss in speculation business: section 39

Where, for any assessment year, the result of computation of income in respect of any speculation business carried on by the assessee is a loss, it shall be set off only against the income, if any, from any other speculation business carried on by him and assessable for that assessment year.

Where, for any assessment year, any loss computed in respect of a speculation business has not been wholly set off section 39(1), so much of the loss as has not been so set off, or the whole loss where the assessee has no income from any other speculation business, shall, subject to the provisions of the Ordinance, be carried forward to the next following assessment year, and

- (a) it shall be set off against the income, if any, from any speculation business carried on by the assessee and assessable for that assessment year; and
- (b) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the next assessment year and so on for not more than six successive assessment years.

12.6 Set off and carry forward of loss under the head 'capital gains': section 40

Where, in respect of any assessment year, the net result of computation of income from any source under the head 'capital gains' is a loss, it shall be set off only against income from any other source falling under that head and assessable for that year.

Where, for any assessment year, any loss computed under the head 'capital gains' has not been wholly set off under section 40(1), so much of the loss as has not been so set off, or the whole loss where the assessee has no income from any other source falling under that head, shall, subject to the provisions of the Ordinance, be carried forward to the next following assessment year, and-

- (a) it shall be set off against income, if any, of the assessee under that head and assessable for that year; and
- (b) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the next assessment year and so on for not more than six successive assessment years.

Where, in respect of any assessment year, the loss computed under the head 'capital gains' does not exceed five thousand taka it shall not be carried forward and where it exceeds five thousand taka only so much of such loss shall be carried forward as exceeds five thousand taka under section 40(3).

12.7 Carry forward of loss under the head 'agricultural income': section 41

Where, for any assessment year, the net result of the computation of income under the head 'agricultural income' is a loss to the assessee, and such loss has not been wholly set off under section 37, so much of the loss as has not been so set off, or the whole of the loss, where the assessee has no income under any other head or has income only under the head 'capital gains' shall be carried forward to the next following assessment year, and-

- (a) it shall be set off against agricultural income, if any, of the assessee assessable for that assessment year; and
- (b) if the loss cannot be wholly so set off, the amount not so set off shall be carried forward to the next assessment year and so on for not more than six successive assessment years.

12.8 Carry forward of loss of firm and partner

In the case of a firm:

- (a) where the assessee is a firm, the loss sustained by it under any head of income shall be set off under section 37 only against the income of the firm under any other head and not against the income of any of the partners of the firm; and
- (b) where the assessee is a partner of the firm, he shall not be entitled to have any loss sustained by the firm carried forward and set off against his own income [section 42(3)].

In the case of a firm, in the constitution of which a change has occurred-

- (a) the firm shall not be entitled to set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, of the income year in the firm; and
- (b) a partner of the firm shall not be entitled to the benefit of any portion of the said loss as is not apportioned to him [section 42(5)].

12.9 Carry forward of loss of succeeded business or profession

Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, no person, other than the person incurring the loss, shall be entitled to have the loss in such business or profession set off against his income under any other head [section 42(4)].

Example:

A, B, and C were partners in a firm sharing profits in the ratio of 3:2:1. During income year 2017-18, B retired and partner A and C continued in the ratio of 3:1. Up to that year brought forward loss of the firm amounted to Tk. 300,000. Net profit for the current year amounted to Tk. 500,000.

Here is a case of change in the constitution of the firm. The firm cannot set off retiring partner's share of loss against its profit for the current assessment year 2018-19, which is $(2/6 \times \text{Tk. } 300,000) = \text{Tk. } 100,000$ nor C can individually set off or carry forward his share of the loss.

Assessment year 2018-19

	Tk.
Net profit	500,000
Brought forward of previous year's loss	<u>200,000</u>
Adjusted profit	<u>300,000</u>

Let us assume the same facts as have been earlier excepting that A, B and C retired when D, E and F took over the firm.

It is a case of succession since none of the old partners is in the new firm and it is not allowed to set off loss. To maintain continuity at least one partner must continue before and after the change in the constitution of a new partnership firm.

12.10 Carry forward of unabsorbed depreciation: section 42(6)

Where, in making an assessment for any year, full effect cannot be given to the depreciation allowances referred to in section 29(1) (viii) being there is no profits or gains chargeable for that year or such profits or gains being less than the allowance then, subject to the provisions of sub-section (7), the allowance or part of the allowance to which effect has not been given, shall be added to the amount of the allowance for depreciation for the following year and be deemed to be part of that

allowance or if there is no such allowance for that year, be deemed to be the allowance for that year and so on for succeeding years [section 42(6)] .

In case of depreciation loss to be carried forward, effect shall first be given to the provisions of sections 38 and 39(2) [section 42(7)].

12.11 Carry forward of loss of tax holiday undertaking: Section: 46B(9)

Where the assessee sustains a loss from a tax holiday undertaking, it shall be carried forward and set off against the profits and gains of the said undertaking for the following year and where it cannot be wholly set off, the amount of the loss not so set off, shall be carried forward for the next year and so on, but no loss shall be carried forward beyond the tax holiday period specified by the Board in the order issued under section 46B (6) or (7).

11.12 Procedures of carry forward

Losses from particular heads can be carried forward to particular number of years subject to the provisions of IT Ordinance 1984. Following points are important to note:

1. Losses generated under the heads "income from business and profession", "speculation business", "capital gains" and "agricultural income" can be carried forwarded up to a period of six successive assessment years.
2. In any assessment year, if the business loss (excluding loss of speculation business) has not been wholly set off, it can be carried forwarded to set off from the income of the **same business** in subsequent six assessment years.
3. The loss from any business or profession can be carried forwarded only if such business or profession is carried on by the assessee in the subsequent income years.
4. Losses from speculation business can only be carried forwarded to set it off only against income from any speculation businesses in subsequent six assessment years.
5. Capital loss can be carried forwarded to set it off against the incomes under the head "capital gains" in subsequent six assessment years. But the carried forwarded amount will only be the excess of Tk. 5,000.
6. Loss under the head "agricultural income" can be carried forwarded for a period of six assessment years and set off against agricultural income in subsequent six years.
7. A successor-in-business otherwise than by inheritance cannot claim to carry forward the loss incurred by his predecessor.

Following table gives a bird's eye view of carry forward of losses:

Loss originated from	Carry forward and set off against	Period of carry forward
Business or profession	Income from same business or profession	6 succeeding years
Speculation business	Any speculation business	6 succeeding years
Capital gains	Capital gains	6 succeeding years
Agricultural income	Agricultural income	6 succeeding years
Profits and gains of Tax holiday undertaking	Profits and gains of the said undertaking	Within tax holiday period
Unabsorbed depreciation	Income from business and profession	Unlimited period

Worked examples

Worked example 1

Mr. Amir Hossain has the following income in different income years. Calculate his total income after considering provisions relating to set off and carry forward of losses.

	2016-17	2017-18	2018-19
Interest on securities	20,000	30,000	20,000
Income from house property	1,30,000	1,20,000	1,30,000
Income from agriculture	(1,70,000)	(30,000)	40,000
Income from speculative business	-	(40,000)	50,000
Capital gain	25,000	-	-

Solution 1:

Mr. Amir Hossain
Income year: 2015-16
Assessment year 2016-17

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	20,000		
Income from house property	1,30,000		
Income available to set off losses from agriculture	1,50,000	1,50,000	
Income from agriculture	(1,70,000)	(1,70,000)	
Income available after set off		(20,000)	
Carry forward (losses from agriculture)			20,000
Income after set off & carry forward of losses	-		
Income from capital gains	25,000		
Total income	<u>25,000</u>		

Mr. Amir Hossain
Income year: 2016-17
Assessment year: 2017-18

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	30,000		
Income from house property	1,20,000		
Income available to set off losses from agriculture	1,50,000	1,50,000	
Income from agriculture	(30,000)	(30,000)	
Set off: Current year loss			
Income after set off	1,20,000	1,20,000	
Carry forward: last year loss from agriculture			20,000
Carry forward: Income from speculative business			40,000
Income after set off & carry forward of losses	<u>1,20,000</u>		

Mr. Amir Hossain
Income year: 2017-18
Assessment year: 2018-19

Sources of income	Taxable income	Set off	Carry forward
Interest on securities	20,000		
Income from house property	1,30,000		
Income available to set off losses from agriculture	1,50,000		
Income from agriculture		40,000	
Set off: Losses carried forward from earlier year		(20,000)	
Remaining income from agriculture after set off	20,000	20,000	
Income from speculation		50,000	
Set off: Losses carried forward from last year		(40,000)	
Remaining income from speculation after set off	10,000	10,000	
Income after set off & carry forward of losses	1,80,000		

Worked example 2

Mr. Jamshed Sowdagor reports the following income for the income year ended on June 30, 2018.

Income from business and profession	Tk. 500,000
Income from house property	100,000
Capital gains	50,000
Income from speculative business	80,000

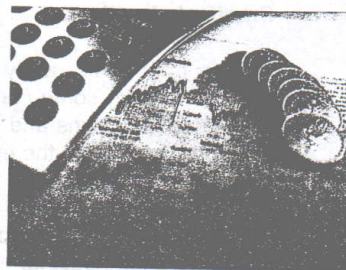
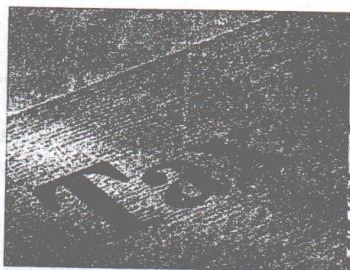
However, he has some losses carried forward from earlier years (income years) with the following details:

Heads	Amount of losses	Year of origin
Income from business and profession	Tk. 80,000	2013-14
Capital gain	50,000	2008-09
Income from speculative business	40,000	2010-11
Unabsorbed depreciation	50,000	2006-07

Solution 2:

Mr. Jamshed Sowdagor
Income year: 2017-18
Assessment year: 2018-19

Sources of income	Tk.	Tk.	Tk.
Income from business and profession		500,000	
Set off: Losses carried forward from 2012-13	80,000		
Unabsorbed depreciation	<u>50,000</u>	<u>130,000</u>	
Taxable income from business and profession			370,000
Income from house property			100,000
Capital gains		50,000	
Set off: not allowed as it exceeds 6 years			50,000
Income from speculation business		80,000	
Set off: Losses carried forward from 2009-10		<u>40,000</u>	<u>40,000</u>
Total income on which tax to be applied			<u>560,000</u>



Chapter 13

Exemption and allowances (Tax holiday / other exemptions)

Contents

Introduction

Examination content

Topic list

13.0	Tax holiday
13.1	Exemption – Section 44 and Sixth Schedule: Part A & Part B
13.2	Tax holiday scheme for newly established industrial undertakings and physical infrastructural facility: section 46B and 46C
13.3	Type of industry eligible for tax holiday
13.4	Categories of industries within the meaning of industrial undertakings
13.5	Categories of infrastructure within the meaning of physical infrastructure facility
13.6	Conditions for eligibility
13.7	Application procedure and its disposal by the NBR
13.8	Withdrawal and cancellation of tax holiday
13.9	Period of tax holiday for industrial undertaking
13.10	Period of tax holiday for physical infrastructure facility irrespective of the location
13.11	Conditions to be fulfilled after getting tax holiday
13.12	Documents to be submitted with tax holiday application
13.13	Tax Exemption of industry set up at EPZ

Introduction

Learning objectives

- Identify the area of investment for tax holiday scheme.
- Recognize the conditions for enjoying tax holiday.
- Determine the tax holiday income

Practical significance

Income from some newly established industrial undertakings are exempted from tax liability on the basis of fulfilling some conditions. To get the facility of tax holiday, the undertakings need to comply with some conditions and if any conditions are not fulfilled in the course of making assessment of an exempted assessee, the exemption will be withdrawn and the DCT shall determine the tax payable on such income.

The tax holiday and special tax exemptions or tax concessions are provided to different types of business and industrial undertaking to encourage those businesses and industries for overall development of the country. Significant exemption on income from export sales also a good initiative of government to promote the export oriented Bangladeshi companies.

Stop and think

When you want to start a new business you can consider the opportunity of tax holiday or special tax exemption given by the Government. You can be the part of the development of the country and at the same time you can get the tax holiday facility to enrich your business.

Working context

Accountants are sometimes required by the entrepreneur for giving advice on how the business can be newly started or expanded along with the tax holiday or special tax exemption facility. Chartered accountants can help their clients regarding new business or expansion of their business in such way that the clients can enjoy the tax holiday opportunity. Accountants should have the detailed knowledge on the area of tax exempted business and the updates of the rules and regulations for getting tax holiday and other special tax exemption facility so that they can rightly advise their clients enjoying that facility.

Syllabus links

The topics covered in this chapter imply the area of industry and investments from where you can get tax holiday benefit with the conditions to get that benefit.

Examination context

Exam requirements

In the examination, students may be required to:

- Recognize the different industrial undertakings for taking tax holiday facility.
- Illustrate the various conditions for getting tax holiday.
- State the way of computing tax holiday income.
- Mention the reasons for withdrawal and cancellation of tax holiday.
- Define the exemption of tax liability for Bangladeshi exporting industries.
- Mention the different types of business considered for special tax exemptions.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

13.0 TAX HOLIDAY

Section overview

- Assessee enjoying some non-assessable income.
- Assessee enjoying tax rebate on investment allowance.
- Some newly established industrial undertakings are enjoying tax holiday.
- There are some conditions to get the tax holiday facility.
- The purpose of tax holiday is to encourage industrial and other development of the country in many sectors like physical infrastructure, textile, hospital, exporting industries etc.
- Tax holiday income shall be computed like the computation of income from business or profession.
- Tax holiday may be cancelled or withdrawn if one or more conditions not fulfilled.

13.1 Exemption – Section 44 and Sixth Schedule: Part A & Part B

Any income or class of income or the income of any person or class of persons specified in Part A of the Sixth Schedule shall be exempt from payment of tax as per section 44(1). Following items as specified in Part A of the Sixth Schedule of the ITO, 1984, are exempted from tax:

1. Income from property held under trust or other legal obligation [Para – 1]:

Any income derived from house property held under trust or other legal obligation wholly for religious or charitable purpose and if part of the house is so held, the income as set apart for application. This provision is not applicable to an NGO registered with NGO Affairs Bureau. Where any such income is not applied for charitable or religious purposes during the income year, following conditions should be complied with to get the tax exemptions:

- (a) There should be given a notice in writing to the DCT specifying purposes for which the income is being accumulated or set apart. But the period of such accumulation should not be more than 10 years.
- (b) The money so accumulated or set apart is either invested in any Government Security or deposited in any Post Office Savings Bank Account or deposited in any account with scheduled bank of which 51% or more shares are held by the government.

2. Income from micro credit operation of NGOs [Para – 1A]:

Any service charge derived from operation of micro credit by an NGO registered with NGO Affairs Bureau.

3. Voluntary contributions received by religious or charitable institutions [Para – 2]:

Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious and charitable purposes. It would however, not be applicable to a private religious trust which does not ensure public welfare as a whole.

4. Income of Local Government [Para – 3]

5. Income of provident and other funds [Para – 4]:

Any income accruing to, or derived by –

- a) a provident fund established under the Provident Fund Act, 1925.

b) A workers profit participation fund established under Bangladesh Labor Act, 2006 subject to any such conditions and limits as may be prescribed.

6. Any special allowance or benefits to meet official duties [Para – 5]:

Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

7. Income received by the trustees on behalf of specified funds [Para – 6]:

Any income received by the trustees on behalf of a recognized provident fund, an approved superannuation fund, pension fund and an approved gratuity fund.

8. Income of foreign employees working at foreign Missions [Para – 7]

9. Pension [Para – 8]

10. Cash dividend up to Tk.25,000 [Para –11A]

11. Share of capital gain of a partner of a firm [Para – 18]:

Any income received by a partner out of firm's capital gain on which tax has already been paid by the firm.

12. Income of a member of a Hindu Undivided Family (HUF) [Para – 19]:

Any income received by a member of HUF out of income of the said family.

13. Gratuity up to Tk.2.5 crore [Para – 20]:

14. Any payment received from Provident and other funds [Para – 21]:

Any payment from:

- a) A provident fund to which the Provident Funds Act, 1925 applies.
- b) A recognized provident fund, subject to any such conditions and limits as may be prescribed.
- c) An approved superannuation fund, subject to any such conditions and limits as may be prescribed.
- d) A workers participation fund established under the Bangladesh Labor Act,2006, and received up to Tk.50,000

15. Income from mutual or unit fund up to Tk. 25,000 [Para – 22A]:

16. Interest on tax free Government securities [Para – 24]:

Any interest classifiable under the head "interest on securities" receivable by an assessee on any security of the Government, which is issued with the condition that interest thereon shall not be liable to tax.

17. Any income received from:[Para-24A]

Wage Earners' Development Bond.
US Dollar Premium Bond
US Dollar Investment Bond
Euro Premium Bond
Euro Investment Bond
Pound sterling Premium Bond
Pound sterling Investment Bond

18. Interest on the balance in a Recognized Provident Fund [Para – 25]:
Interest credited on the accumulated balance of an employee in a recognized provident fund not exceeding one-third of the salary (here salary means basic salary and dearness allowance) of the employee for the year concerned and in so far as it is allowed @ not exceeding 14.50%.
19. Payment received on voluntary retirement [Para – 26]:
Any amount received by an employee of a Government organization, a local authority, an autonomous or semi-autonomous body including the units or enterprises controlled by it, on a voluntary retirement scheme approved by the government.
20. Income of indigenous Hillman [Para – 27]:
Any income received from economic activities undertaken by indigenous Hillman in the hill districts of Rangamati, Bandarban and Khagrachari.
21. 50% income from export business [Para – 28]:
An amount equal to 50% of the income of an assessee other than a company registered outside Bangladesh derived from export business excepting the assessee who are enjoying tax exemption or reduction thereon by any notification.
22. Agricultural income [Para – 29]:
Agricultural income up to Tk. 2,00,000 of an individual assessee, whose only source of income is agriculture.
23. Income from software development and related business [Para – 33]:
Income derived from the business of software development and specific Information Technology Enabled Services (ITES) for the period from July 01, 2008 to June 30, 2024. Condition is that, such person shall file income tax return in accordance with the provision of Section 75.
24. Income from export of handicrafts [Para – 35]:
Any income derived from the export of handicrafts for the period from July 01, 2008 to June 30, 2019.
25. Tax paid by the government on behalf of a petroleum company [Para – 36]:
Any amount paid by the government as tax on behalf of a petroleum exploration company engaged in exploration of petroleum products in Bangladesh under Production Sharing Contract (PSC) with the Government of Bangladesh.
26. Income of private agricultural college/university [Para – 37]:
Income of any private Agricultural College or private Agricultural University derived from agricultural educational activities.
27. Income of house rent with specific characteristics [Para – 38]:
Any income derived from any building, not less than five storied, having at least ten flats, constructed at any time between July 01, 2009 to June 30, 2014 (both days inclusive), for ten years from the date of completion of construction of the building, if it is situated in any area of Bangladesh other than the areas of City Corporation, Cantonment Board, Tongi Upazila, Narayanganj Paurashaba, Gazipur Pourashava and any Pourashaba under Dhaka district.
28. Income of SME [Para – 39]:
Income derived from any Small and Medium Enterprise (SME) engaged in production of any goods and having an annual turnover of not more than Tk.36,00,000/. Provided that the person shall file income tax return in accordance with the provisions of Section 75.
29. Income from Zero Coupon Bond [Para – 40]:
Any income derived from Zero Coupon Bond received by a person other than Bank, Insurance or any Financial Institution, subject to the following conditions:

- (a) that the Zero Coupon Bond is issued by Bank, Insurance or any Financial Institution with prior approval of Bangladesh Bank and Securities and Exchange Commission.
- (b) that the Zero Coupon Bond is issued by any institution other than Bank, Insurance or any Financial Institution with prior approval of Securities and Exchange Commission.

30. Capital gain of non-resident shareholder [Para – 43]:

Any capital gain arising from the transfer of listed company's shares by any non-resident shareholder subject to the condition that such assessee is entitled similar benefit/exemption in his own country.

31. Tax exemption on income of cinema hall/Cineplex and industry producing rice bran oil [Para 44 and 45]

Income of cinema hall/Cineplex and income from industry producing rice bran oil will also be tax free like tax holiday but without any tax holiday application to NBR if it starts commercial exhibition/production within 01/07/2012 to 30/06/2015. Time and condition of tax exemption is tabulated below:

Area	Years	Rate of exemption
(a) Dhaka, Mymensingh and Chittagong division (excluding Dhaka, Narayangonj, Gazipur and Chittagong district and also the hill district of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%
		2nd 2 years..... 50%
		Last year.....25%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division (including the hill district of Rangamati, Bandarban and Khagrachari)	7	1st 3 years.....100%
		2nd 3 years..... 50%
		Last year.....25%

32. 50% income from production of corn/maize or sugar beet [Para – 46]:

An amount equal to 50% of the income of an assessee derived from the production of corn/maize or sugar beet.

34. Income donated to Prime Minister's Education Assistance Fund [Para – 47]:

Any income if donated to Prime Minister's Education Assistance Fund subject to a maximum of:

- (a) 20% of income of a company or Tk.8,00,00,000/(eight crore) whichever is less.
- (b) 20% of income of an assessee other than a company or Tk.1,00,00,000/(one crore) whichever is less.

35. Any income earned in abroad by a Bangladeshi citizen and brought any such income into Bangladesh as per existing laws applicable in respect of foreign remittance. [Para-48]

36. Donation to any Girls' school or girls' college through crossed cheque or bank transfer. Such school or college must be approved by the ministry of education of the Government. [Para-49]

37. Donation to technical or vocational training institute through crossed cheque or bank transfer. Such training institute must be approved by the ministry of education of the Government. [Para-50]

38. Donation to national level institute engaged in the Research & Development of agriculture, science, technology and industrial development through crossed cheque or bank transfer [para-51]

39. Any income (except interest and dividend) of MPO enlisted educational institution or any other educational institution if it follows national curriculum or governed by a body formed as per Govt. rules and regulations. [Para 52]

40. Any income (except interest and dividend) received by any public university and professional body like ICAB, ICMA and ICSB [Para 53].
41. Any investment from an alternative investment fund recognized by SEC [Para 54].
42. Any income of SEC for 5 years starting from the assessment year 2017-18 to 2021- 22[Para 55].
43. Any honorarium or allowance from Bangladesh Freedom Fighters Welfare Trust or any welfare allowance received by any persons from the Govt. [Para 56].
44. Any reward received by any person from the Govt. [Para 57].
45. Income derived from the operation of an elderly care home or a day care home for children [Para-58]
46. Income derived from educational or training institute runs exclusively for persons with disability [Para-59]
47. Any distribution of taxed dividend to a resident company if the company distributing such taxed dividend has maintained separate account for the taxed dividend.[Para-60]

Investment tax rebate

An assessee shall be entitled to a rebate from the amount of tax payable on his total income of an amount equal to 15%/12%/10% of the sums specified in paragraphs in all paragraphs excluding paragraphs 15 and 16 of Sixth Schedule(Part-B) [section 44(2)(b)]. The following items should be considered as investment allowance to enjoy tax rebate facility as per Sixth Schedule (Part-B):

1. Life insurance premium [Para -1]:
Any sum paid in Bangladesh by an assessee to effect on insurance or a contract for deferred annuity on the life of himself, spouse or minor child, provided that such payment shall not exceed 10% of the sum assured (excluding bonus or other benefits).
2. Life insurance premium paid by a Hindu Undivided Family [Para -2]:
Any sum paid in Bangladesh by a HUF to effect on insurance on the life of any male member of the family or the wife of any such member.
3. Deduction from the salary of Government employee for deferred annuity [Para -3]:
Any sum not exceeding one-fifth of the salary deducted from the salary payable by the Government or on its behalf to any individual in accordance with the service conditions to secure a deferred annuity for him or for his wife or children.
4. Contribution to Provident Fund [Para -4]:
Any contribution by an assessee to any provident fund to which the Provident Fund Act, 1925 applies.
5. Employer's and Employee's contribution to a Recognized Provident Fund [Para -5]:
Any sum paid to a recognized provident fund by the assessee and the employer, where the assessee is a participant subject to the limits laid down in Part B of the First Schedule.
6. Contribution to Superannuation Fund [Para -6]:
Any sum paid by the assessee as ordinary annual contribution to approved superannuation fund in which assessee is a participant to the fund.
7. Investment in Savings Certificate [Para -10]:
Any sum invested by an assessee other than a company in the following:

- a) Savings certificates or instruments specified by the NBR;
- b) Unit certificates and mutual fund certificates issued by any financial institution or ICB and its subsidiaries;
- c) Govt. securities including development loans/Bonds as specified by the NBR;
- d) Shares of investment companies as specified by the NBR.

If the securities are disposed of by sale, transfer or in any other manner within 5 years from the date of purchase or before the maturity thereof, the tax credit availed for such investment will be cancelled. This amount has to be added to the tax payable of the income year on which such savings certificate was disposed of.

8. Contribution to Deposit Pension Scheme (DPS) [Para -11]:
Any amount not exceeding Tk.60,000 by an individual in any Deposit Pension Scheme sponsored by a Scheduled Bank or financial institution.
9. Donation to a charitable hospital [Para -11A]:
Any sum paid as donation to NBR approved charitable hospital established outside the city corporation area, provided the donation is made after one year of establishment of the hospital.
10. Donation to organizations set up for the welfare of retarded people [Para -11B]:
Any sum paid as donation to an organization set up for the welfare of retarded people, provided the donation is made after one year of establishment of the organization and is approved by the Social Welfare Department and the NBR.
11. Donation to Govt. Zakat Fund [Para -13]:
Any sum paid by an assessee as Donation/Zakat to the Zakat Fund established by or under the Zakat Fund Ordinance, 1982.
12. Contribution to Benevolent Fund and Group Insurance Scheme [Para -17]:
Any sum paid by an assessee to make provision for his spouse, children or other dependent person to a benevolent fund or any premium paid under a group insurance scheme approved by the NBR.
13. Contribution to Aga Khan Development Network [Para -21]:
Any sum paid by an assessee as donation to any socio-economic or cultural development institution established by the Aga Khan Development Network in Bangladesh.
14. Contribution to philanthropic or educational institution [Para -22]:
Any sum paid by an assessee as donation to Philanthropic or Educational Institution approved by the government for this purpose.
15. Investment in the purchase of computer / Laptop [Para -23]:
Any sum invested in the purchase of one computer (Up to Tk. 50,000) or one laptop (Up to Tk. 1,00,000) by an individual assessee.
16. Donation to national level institution set up in memory of the liberation war [Para-24]:
Any sum paid by an assessee as donation to a national level institution set up in memory of liberation war.
17. Donation to national level institution set up in memory of Father of the Nation [Para-25]: Any sum paid by an assessee as donation to a national level institution set up in memory of Father of the nation.
18. Investment in shares by an individual assessee [Para -27] :
Any sum invested by an assessee, being an individual, in the acquisition, through of any stocks or shares of a company, mutual fund or debenture listed with any stock exchange.

19. Investment in Government Treasury Bond [Para – 28]:

Any sum invested by an assessee, being an individual, in the purchase of Bangladesh Government Treasury Bond.

However, Para 15 and 16 is excluded from the above list as tax shall not be payable by an assessee in respect of any income or any sum specified in those paragraphs as per section 44(2)(a). For Reference, these two paragraphs are presented below:

1. **Income from Association of Persons:** Any sum received by the assessee out of the income of an association of persons other than a Hindu Undivided Family, company or firm on which tax has already been paid. [Para –15, Part B. Sixth Schedule]
2. **Income from a Firm:** Any share of profit of a partnership firm if tax on such profit or income has already been paid by the firm. [Para –16, Part B. Sixth Schedule]

As per section 44(2)(b) of the ITO, 1984, a resident and non-resident Bangladeshi assessee will get tax rebate of an amount equal to 15%, 12% or 10% of the eligible amount in Part B of the Sixth Schedule. However, as per Section 44(2)(b) and (c), the allowable investment allowance is the lower amount of the following three:

25% of total income excluding

- (1) any income u/s 82C
- (2) any income where reduced tax rate is applicable
- (3) any tax free income

OR

TK. 1,50,00,000/=

OR

Actual investments

Whichever is lower is to be treated as eligible amount

Tax rebate

**@15% on 1st eligible amount
Tk.2,50,000**

**@12% on next eligible amount
Tk.5,00,000**

@10% on the remaining eligible amount

Illustration

An assessee's total income during income year 2017-2018 amounted to Tk. 1,000,000. He has made investments in allowable areas as per Part B, Sixth Schedule amounted Tk. 400,000. Employer's contribution to recognized provident fund was Tk. 80,000 and he has no income on which tax was deducted at sources. Compute tax rebate on investment allowance.

Actual investment made

: Tk. 400,000

Maximum limit:

25% of taxable income: 25% of Tk. 10,00,000 =
Tk. 2,50,000

or,

Tk. 1,50,00,000

or

Actual investment Tk. 4,00,000

: Tk. 276,000

Lower one

Thus, allowable amount for investment allowance is Tk. 2,50,000 and tax rebate will be 15% of Tk. 2,50,000, i.e., Tk. 37,500.

13.2 Tax holiday scheme for newly established industrial undertakings and physical infrastructural facility: section 46B and 46C

Tax holiday has been started to allow as a tax incentive for industrialization in this region since 1959 by introducing new section 15BB in the then Income Tax Act 1922. In 1972, the tax holiday system was withdrawn by repealing section 15BB. But the incentive was re-introduced by incorporating section 14A in the Income Tax Act 1922 by the Finance Act 1974 with effect from the assessment year 1974-75 for industrial undertakings (established on or after 1st July 1973 having subscribed and paid up capital not less than Tk. 1 lakh and not more than Tk. 35 Lakh) and also for tourist industries (established on or after 01 January 1976 having subscribed and paid up capital not less than tk. 1 lakh and not more than Tk. 10 crore) with the tax holiday period of 9 years for the prescribed areas and of 5 years for other areas.

With the introduction of the Income tax Ordinance 1984, the provision of tax holiday has been maintained under sections .45 and 46 primarily. The provision was applicable for industrial undertakings (established between 01 July 1974 and 30 June 1985) and tourist industries (established between 01 January 1976 and 30 June 1985) having subscribed and paid-up capital not less than Tk 1 lakh for any industries. The tax holiday incentive was first extended for the industries up to 30 June 1990 by the Finance Act 1985 , then up to 30 June 2000 by the FA 1989. But subsequently through FA 1991 the incentive was restricted for the industries established within 30 June 1995 with an apparent intention of withdrawing the tax holiday incentive since 1995-96.

New section 46A has been introduced through FA 1995 allowing the tax holiday incentive for industrial undertakings, tourist industries and physical infrastructure facilities established between 01 July 1995 and 30 June 2008 with having subscribed and paid up capital not less that Tk. 1 lakh. It is extended for another 3 years through inserting section 46B with some minor changes and again for 2 years through inserting section 46C with having subscribed and paid up capital not less that Tk. 20 lakh. Tax holiday facility has further been extended for 2 years from 1st July, 2013 to 30th June, 2015 through Finance Act, 2013 and again from 01/7/2015 to 30/6/2019 through Finance Act, 2014.

13.3 Types of business eligible for tax holiday.

Two types of business are eligible to apply for tax holiday: -

1. Industrial undertaking;
2. Physical infrastructure facility.

13.4 The following categories of industries are eligible for the definition of industrial undertakings

1. Active pharmaceuticals ingredient industry & radio pharmaceuticals industry;
2. Automobile manufacturing industry
3. Barrier contraceptive and rubber latex;
4. Basic chemicals or dyes and chemicals;
5. Basic ingredients of electronic industries. (e.g. .resistance, capacitor,
6. transistor, integrator, circuit);
7. Bio-fertilizer;
8. Biotechnology;
9. Bi-cycle manufacturing industry
10. Boilers;
11. Compressors;
12. Computer hardware;
13. Energy efficient appliances;
14. Insecticide or pesticide;
15. Petro-chemicals;
16. Pharmaceuticals;
17. Processing of locally produced fruits and vegetables;

18. Radio-active (diffusion) application industry (e.g. developing quality or decaying polymer or preservation of food or disinfecting medicinal equipment)
19. Textile machinery;
20. Tissue grafting;
21. Tire manufacturing industry
22. Automatic brick manufactured by hybrid Hoffmann kiln or Tunnel Kiln technology, or
23. Any other category of industries as the Govt. may notify in the official Gazette,

13.5 The following categories of infrastructure are within the meaning of Physical infrastructure facility:-

1. Deep sea port;
2. Elevated expressway;
3. Export processing zone;
4. Flyover;
5. Gas pipe line;
6. Hi-tech park;
7. ICT village or software technology zone;
8. IT Park;
9. Large water treatment plant and supply through pipe line;
10. Liquefied Natural Gas terminal and transmission line;
11. Mono-rail;
12. Rapid transit;
13. Renewable energy (e.g. energy saving bulb, solar energy plant, windmill);
14. Sea or river port;
15. Toll road or bridge;
16. Underground rail;
17. Waste treatment plant; or
18. Any other category of industries as the Govt. may notify in the official Gazette,

13.6 Conditions for eligibility:

Some conditions are required to be fulfilled for tax holiday under section 46B and 46C of the Income Tax Ordinance, 1984. These are as follows: -

- (a) The undertaking must be owned and managed by either a body corporate established by or under an act of parliament with its head office in Bangladesh or a company as per Companies Act, 1913/1994 with its registered office in Bangladesh having a subscribed and paid up capital of not less than taka 20, 00,000/-(Tk. twenty lakh) on the date of commencement of commercial production or operation.
- (b) The undertaking is not formed by splitting up or by reconstruction or reconstitution of business already in existence or by transfer to a new business of any plant and machinery used in business, which was being carried on in Bangladesh at any time before the commencement of the new business.
- (c) The undertaking must be approved by the NBR for the purpose of tax holiday.
- (d) The undertaking shall have to obtain clearance certificate from the Directorate of Environment for the relevant income year.

13.7 Application procedure and its disposal by the NBR.

- (a) Tax holiday application is to be submitted to the NBR within 6 months from the end of the month of commercial production or operations in the form prescribed in Rule 59A, in duplicate, duly signed and verified by the MD or Director of the company.

- (b) NBR shall give its decision within 45 days from the date of receipt of the application by the Board. Otherwise the undertaking shall be deemed to have been approved.
- (c) NBR shall not reject any application unless the applicant is given a reasonable opportunity of being heard.
- (d) If NBR rejects any tax holiday application, the undertaking can submit a review application to the Chairman of the Board within 4 months from the date of receipt of the rejection letter. Chairman then will either review himself or will constitute a committee consisting of 3 Member of the NBR who will review its previous decision and pass such order as it think fit. There is no time limit for disposal of the review application. The decision of the review committee of the NBR as final and conclusive and there is no scope to submit further review application.

13.8 Withdrawal and cancellation of tax holiday.

- a. Any understanding after getting tax holiday from the NBR can write to the NBR for cancellation of tax holiday within 1 year from the date of granting such tax holiday.
- b. NBR may also cancel/suspend fully/partially any tax holiday in the public interest.
- c. The DCT in the course of assessment may also withdraw the tax holiday from the relevant assessment year if he is satisfied that one or more of the required conditions are not fulfilled or any foreigner is employed or allowed to work without prior approval of BOI or any other competent authority of the Govt..
- (4) Tax holiday shall be deemed to have been withdrawn for the assessment year in which the following transaction is made:-
- (a) If the company is engaged in any commercial transaction with another company having one or more sponsor shareholders, and.
- (b) If the DCT finds that the company has purchased or sold goods at higher/lower price than the normal market price with the intention to reduce the income of another undertaking/company.

13.9 Period of tax holiday for industrial undertaking

Area	Years	Rate of exemption	
		If it is established within 30/6/13	If it is established from 01/7/13 to 30/6/19
(a) Dhaka, Mymensingh and Chittagang division (excluding Dhaka, Narayanganj, Gazipur and Chittagong district and also the hill districts of Rangamati, Bandarban and Khagrachari)	5	1st 2 years.....100%	First 2 years.....100%
		Next 2 years..... 50%	3 rd year-----60%
		Fifth year.....25%	4 th year-----40%
			5 th year-----20%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division (including the hill districts of Rangamati, Bandarban and Khagrachari)	10	First3years.....100%	First 2 years.....100%
		Next3 years..... 50%	3 rd year-----70%
		Seventh year.....25%	4 th year-----55%
			5 th year-----40%
			6 th year-----25%
			7 th to 10 th year-----20%

Provided that only bio-fertilizer industry will get tax holiday for 5 years even if it is set up in the district of Dhaka, Narayanganj, Gazipur and Chittagong.

13.10 Period of tax holiday for physical infrastructure facility irrespective of the location

Rate of exemption	
If it is established within 30/6/13	If it is established from 01/7/13 to 30/6/19
1 st 5 years.....100%	1 st 2 years.....100%
Next 3 years.....50%	3 rd year.....80%
Next 2 years.....25%	4 th year.....70%
	5 th year.....60%
	6 th year.....50%
	7 th year.....40%
	8 th year.....30%
	9 th year.....20%
	10 th year.....10%

13.11 Conditions to be fulfilled after getting tax holiday:-

- The profits and gains of the tax holiday company shall be computed separately;
- Any loss during the tax holiday period cannot be carried forward beyond the tax holiday period.
- Only normal depreciation is applicable for tax holiday enjoying companies
- 30% + 10% = 40% year wise tax holiday income is to be reinvested. 30% is to be reinvested in the same company or in a new industry within the tax holiday period or maximum within 1 year from the end of the tax holiday period. Another 10% is to be reinvested in the shares of listed company in each year within 3 months from the end of the income year.

Otherwise income of the year or years will subject of tax. However, the quantum of reinvestment will be reduced by the amount of dividend if declared by the company.

- The income of the tax holiday company under the following heads are taxable; _

(1) Capital gain

(2) Any income arising from the disallowances u/s 30.

(3) Dividend is taxable at the hand of shareholders.

13.12 Documents to be submitted with tax holiday application:-

The following documents are to be submitted along with tax holiday application:-

- An attested copy of certificate of incorporation;
- An attested copy of the Memorandum and Articles of Association of the company;
- A certificate of commencement of business;
- In case the company has already commenced business, certified copy of the audited balance sheet and profit and loss accounts for the period for which the accounts have been prepared;
- In case of industrial undertaking/physical infrastructure facility for which approval is sought has been acquired for another party, an attested copy of the agreement between the applicant company and the seller enter into for the acquisition of the industrial undertaking/physical infrastructure with list and value of assets acquire;
- A certificate to the effect that the industrial undertaking/physical infrastructure facility has not applied or shall not apply for accelerated depreciation allowance under paragraph 7 or 7A of the Third Schedule to the Ordinance.

Worked example

A tax holiday company's income was determined at Tk. 1,000,000 without considering disallowances u/s 30 [under (a), (aa) & (e) above] of Tk. 400,000.

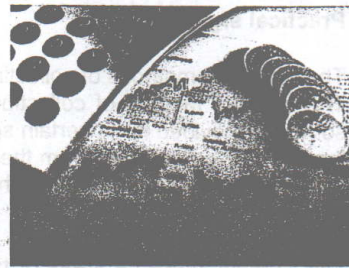
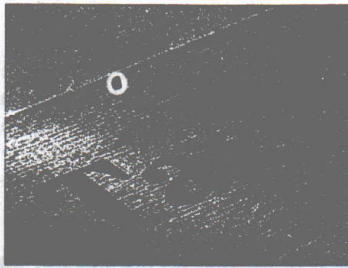
Solution

The tax holiday company is liable to pay tax on disallowances u/s 30 Tk. 400,000.

13.12 Tax exemption on income of industry set up at EPZ:

Industries set up at EPZ (including private EPZ) from 01/01/2012 onward will automatically get tax exemption. The area and period of tax exemption is tabulated below:

Area	Years	Rate of exemption
(a) Dhaka and Chittagong division (excluding the hill district of Rangamati, Bandarban and Khagrachari)	5	First 2 years.....100%
		Next 2 years..... 50%
		Fifth year.....25%
(b) Rajshahi, Khulna, Sylhet, Rangpur and Barisal division (including the hill districts of Rangamati, Bandarban and Khagrachari)	7	First 3 years.....100%
		Next 3 years..... 50%
		Seventh year.....25%



Chapter 14

Deduction/collection of tax at source

Contents

Introduction

Examination context

Topic list

14.1	Deduction/collection of tax at source and advance payment of tax
14.2	Payment subject to deduction of tax at source
14.3	Person responsible for tax deduction at source: section 49(3)
14.4	Time limit for payment of tax deducted at source
14.5	Manner of payment of tax deducted at source
14.6	Issuance of certificate for tax deducted at source
14.7	Rates of TDS at a glance
14.8	TDS will be treated as minimum tax u/s 82C in certain situation
14.9	Other issues relating to TDS

Introduction

Learning objectives

- Recognize different classes of income from where tax are deducted or collected at source.
- Mention the time limit and manner of payment of tax deducted at source.
- Explain the consequence of non-deduction of tax at source where deduction is required by law.
- Define the computation, estimation and payment procedures of TDS.
- Mention the income heads that come under final settlement of tax as per section 82C.

Practical significance

There are two methods of collecting taxes, one is direct method and another is tax deducted at source. The ordinary method of collection is direct collection of tax from the assessee. Deduction of tax at source is provided for in certain specified cases. If default is made in the deduction of taxes at source, the tax may be collected from the assessee directly, and further the person who is liable to deduct but has not deducted the tax under this section, may be held personally liable and treated as an assessee in default in respect of the tax.

This chapter presents areas of taxes deducted at source and related provisions as per income tax ordinance. Section 82C and its application are detailed here. For computing taxable income and tax liability this chapter is very important.

Stop and think

There are so many sources where tax is required to be deducted or collected at the time of payment

Working context

In corporate sectors, normally there are many payments made every day where deductions of tax at source are required by tax law. In some cases the accountants are asking for advice on how and when the deductions need to be done. Accountants can provide the service to their clients on tax deduction at source so that the clients can avoid any penalty for non-compliance of tax law in this regard.

Detailed knowledge about the payment of tax before assessment in compliance with tax law can help accountants to support their clients significantly.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the classes of income from where tax are deducted or collected at source.
- Recognize the different amounts and rates of tax deducted at source.
- Identify the responsibility for deduction of tax at source.
- Define the time limit for payment of tax at source.
- Mention the manner of payment of tax deducted at source.
- Explain the result of deduction or non-deduction of tax at source where deduction is required by law.
- Identify the areas where tax deducted at source is considered as final payment of tax liability under section 82C.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates need to remember the different amount and rates of tax deducted at source while preparing for exam. In practical problem at case study level, both tax deduction at source and calculation of advance tax may be asked.

14.0 PAYMENT OF TAX BEFORE ASSESSMENT

Section overview

- There are two methods of collecting taxes, direct tax and tax deducted at source (TDS).
- There are many classes of income from where tax are deducted or collected at source.
- TDS shall be paid to the credit of the Government normally within 2 weeks from the end of the month of deduction or collection except in the month of June and also in case of salary.
- Rate of TDS are varied.
- The deducted tax in some cases is treated as minimum tax u/s 82C.
- Tax deducting authority will be held liable for failing to deduct taxes and failing to deposit the same with government.
- Credit of TDS.

14.1 Deduction of tax at source and advance payment of tax: section 48

- (1) Notwithstanding that regular assessment in respect of any income is to be made later in any assessment year, and without prejudice to the charge and recovery of tax under the Ordinance after such assessment, the tax on income shall be payable by deduction or collection at source, or by way of advance payment, in accordance with the provisions of this Chapter.
- (2) Any sum deducted or collected or paid by way of advance payment, in accordance with the provisions of this chapter, shall for the purpose of computing the income of an assessee, be deemed to be the income received and be treated as payment of tax in due time by the assessee.

14.2 Income subject to deduction/collection of tax at source: section 49

Tax payable under the Ordinance shall be deducted or collected at source in respect of the following income, namely-

- (1) salaries[Sec 49(1)(a)];
- (2) income from discount on the real value of Bangladesh Bank bills [Sec 49(1)(aa)];
- (3) interest on securities[Sec 49(1)(b)];
- (4) income derived on account of supply of goods or execution of contracts [Sec 49(1)(c)];
- (5) import [Sec 49(1)(d)];
- (6) indenting commission [Sec 49(1)(e)];
- (7) winnings from lottery or crossword puzzles [Sec 49(1)(f)];
- (8) payment to non-resident [Sec 49(1)(g)];
- (9) income from house property[Sec 49(1)(h)];
- (10) export of manpower [Sec 49(1)(i)];
- (11) public auction [Sec 49(1)(j)];
- (12) actors and actress [Sec 49(1)(k)];
- (13) shipping agency commission [Sec 49(1)(m)];
- (14) distributorship commission [Sec 49(1)(n)];
- (15) interest on bank deposits [Sec 49(1)(o)];
- (16) insurance commission [Sec 49(1)(p)];
- (17) capital gain [Sec 49(1)(q)];
- (18) fees for professional or technical services[Sec 49(1)(r)];
- (19) handmade cigarettes [Sec 49(1)(s)];
- (20) compensation against acquisition of property [Sec 49(1)(t)];
- (21) interest on saving instruments [Sec 49(1)(u)];
- (22) brick field [Sec 49(1)(w)];
- (23) services rendered by the doctors [Sec 49(1)(x)];
- (24) L.C. commission [Sec 49(1)(z)];

- (25) survey by a surveyor of general insurance company [Sec 49(1)(za)];
- (26) foreign buyer's agent [Sec 49(1)(zc)];
- (27) cash dividend [Sec 49(1)(zd)];
- (28) certain services [Sec 49(1)(ze)];
- (29) shipping business of a resident [Sec 49(1)(zf)];
- (30) real estate and land development business [Sec 49(1)(zg)];
- (31) export [Sec 49(1)(zh)];
- (32) shareholder of stock exchange on account of transaction of shares [Sec 49(1)(zi)];
- (33) export cash subsidy [Sec 49(1)(zkk)];
- (34) renewal of trade license [Sec 49(1)(zm)];
- (35) freight forward agency commission [Sec 49(1)(zo)];
- (36) rental power [Sec 49(1)(zp)];
- (37) interest of Post Office Savings Bank Account [Sec 49(1)(zq)];
- (38) rent of vacant land or plant or machinery [Sec 49(1)(zr)];
- (39) direct advertisement [Sec 49(1)(zs)];
- (40) salary of foreign technician serving in a diamond cutting industry [Sec 49(1)(zt)];
- (41) transfer of shares by sponsor shareholders of a company [Sec 49(1)(zv)];
- (42) rent of convention hall, conference centre, etc. [Sec 49(1)(zw)];
- (43) services provided by a resident to any foreign person [Sec 49(1)(zx)];
- (44) international gateway service in case of phone call [Sec 49(1)(zy)];
- (45) travel agency commission [Sec 49(ii)];
- (46) Insurance policy [Sec 49(1)(zza)];
- (47) local L/C [Sec 49(1)(zzb)];
- (48) license fees of mobile phone operator company [Sec 49(1)(zzc)];
- (49) transfer of shares of any stock exchange [Sec 49(1)(zzd)];
- (50) transfer of shares of companies listed with stock exchange [Sec 49(1)(zze)];
- (51) lease deed [Sec 49(1)(zzf)];
- (52) Any sum paid by real estate developer to land owner [49(1)(zzg)]

14.3 Person responsible for tax deduction at source: section 49(3)

Tax to be deducted at source under section 49(1) in respect of any income shall be deducted in accordance with the provisions of this chapter by the person responsible for making payment which constitutes the income of the payee. In terms of section 49(3), for the purpose of Chapter VII, 'person responsible for making payment', with its grammatical variations and cognate expressions, means-

- (a) in the case of payments constituting income classifiable under head the 'Salaries' not being payment made by the Government, the employer himself or, if the employer is a local authority, company or institution, such authority, company or institution, including the principal officer thereof;
- (b) in the case of payment constituting income classifiable under head 'Interest on securities' not being payment made by or on behalf of the Government, the authority, company or other institution issuing the security; and
- (c) in the case of payment of any other sum which constitutes an income of the payee chargeable to tax under the Ordinance, the payer himself, or if the payer is a company or other institution, such company or institution including the principal officer thereof.

14.4 Time limit for payment of tax deducted at source: Rule 13

[1] All sums deducted or collected during the month of July to May shall be deposited to the credit of the Government within 2 weeks from the end of the month of deduction or collection.

[2] In case of deduction or collection made in any day from the 1ST to the 20TH day of June of a year within 7 days from the date in which the deduction or collection was made.

[3] In case of deduction or collection made in any other dates of the month of June of a year the next following day in which the deduction or collection was made

[4] Where the deduction or collection was made in the last two working days of the month of June of a year, the payment shall be made to the credit of the Government on the same day on which the deduction or collection was made.

However, the Deputy Commissioner of Taxes may, in a special case and with the approval of the Inspecting Joint/Additional Commissioner of Taxes, permit an employer to pay the tax deducted from any income chargeable under the head "salaries" quarterly on September 15, December 15, March 15 and June 15.

14.5 Manner of payment of tax deducted at source: Rule 14

The person responsible for making deduction or collection of tax under Chapter VII of the Ordinance shall pay the amount of tax so deducted or collected to the credit of the Government within the time specified in rule 13 by-

(a) remitting it through an income tax challan into the Bangladesh Bank or the Sonali Bank, as the case may be; or

(b) transferring the amount electronically in the manner as specified by the Board;

(c) **Interest on saving deposits, fixed deposits and term deposits: Rule 17H**

(1) For the purposes of making deduction of tax under section 53F of the Ordinance, each branch of a scheduled bank including a co-operative bank shall deduct income tax on interest or share of profit on saving deposits or fixed deposits or term deposits at the time of credit or payment of the interest or the share of profit, whichever is earlier, and report the total amount of tax deducted to its head office.

(2) The head office of each such bank shall deposit the total amount of tax deducted by all its branches in the Bangladesh Bank, in lump sum under the head of account 1/1141/zone code/0111- Income Tax – other than companies, giving particulars as "Deduction of income tax under section 53F of the Income Tax Ordinance 1984.

(d) Transfer of property: Rule 17I (2) to (4)

(a) The collection of tax mentioned in sub-rule (1) shall be made through Demand Draft, Pay Order or Challan mentioning one of the following heads of account, namely:-

(1) In the case of the district of Dhaka, the Companies, [1/1141/zone code/0101-Income Tax-Companies]; and

(2) In other cases, [1/1141/zone code/0111- Income Tax Other than Companies.]

(b) The person responsible for registration of the document shall record on the transfer document the amount of the tax and the number and date of the Challan, Demand Draft or Pay Order, as the case may be.

(c) The Challan, Demand Draft or Pay Order shall be made in favour of or credited to:-

i. in the case of the district of Dhaka, the Commissioner of Taxes, Central Survey Zone, Dhaka;

- ii. in the case of the district of Chittagong, the Commissioner of Taxes, Taxes Zone-3, Chittagong;
- iii. in the case of the district of Rajshahi, the Commissioner of Taxes, Taxes Zone, Rajshahi;
- iv. in the case of the district of Khulna, Bagerhat and Satkhira, the Commissioner of Taxes, Taxes Zone, Khulna;
- v. in case of other districts:
 - a. if there exists no taxes office, the Deputy commissioner of Taxes under whose jurisdiction such district falls;
 - b. if there exists only one taxes office, the Deputy commissioner of taxes of that district;
 - c. if there exists more than one taxes office, the Deputy Commissioner of Taxes of Circle-1 of that district.
- (d) The Commissioner of Taxes and the Deputy Commissioner of Taxes concerned shall verify the amounts of tax so collected with challans received by them from the Treasury Offices concerned.

14.6 Issuance of certificate of tax deduction at source: Rule 18

(a) Supply of goods or execution of contracts or (b) rent of house property or (c) fees for professional or technical services [Rule 18(1)]:

All paying authorities shall issue a certificate as required under section 58 of the Ordinance to the person from whom tax has been deducted under 49(1)(c) (h) or (r) of the ordinance within 2nd week of the following month of deduction or within such time as it may be convenient.

(b) Others: Rule 18(2)

All paying and collecting authorities responsible for making deduction or collection of tax under chapter VII of the Ordinance, except tax in respect of (a) supply of goods or execution of contract or (b) rent of house property or (c) fees for professional or technical services, shall furnish to the person from whom such deduction or collection has been made a certificate in the prescribed form.

(c) Supply of goods and execution of contracts: Second proviso to Rule 16

Where the Board, on an application made in this behalf, gives a certificate in writing that the person to whom the deduction is to be made under this rule is otherwise exempted from tax or subject to a reduced rate of tax in any income year under any provision of this Ordinance, the payment referred to in this rule shall be made without any deduction or with deduction at a lesser rate, as the case may be, for that income year.

(d) Importer: Proviso to Rule 17A

Where the Board is satisfied that an importer is not likely to have any taxable income during any period or the income is otherwise exempted from payment of income tax under any provision of the Ordinance, it may, on application by such importer exempt such person from payment of tax for the period during which income of such importer is not likely to be assessable or is exempted from payment of tax.

14.7 Rates of TDS at a glance

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment													
1.	Salaries(including Govt. salary) Members of the Parliament(MP)	U/S 50 U/S 50B	Average rate (Employer will not deduct tax at source or will deduct tax at a lower rate/amount in case an employee can produce a certificate issued by the DCT to do so.)													
2.	Discount on the real value of Bangladesh Bank Bill	U/S 50A	Maximum rate													
3.	Interest on securities	U/S 51	5%(at upfront system) TDS will not be applicable on treasury bill / treasury bond TDS will also be applicable on profit/discount on securities based on Islamic principles but not at upfront system but at the time of payment or credit whichever is earlier.													
4.	Execution of contract, Supply, manufacture, process or conversion, printing, packaging or binding. The rate of deduction will be 50% higher if the payee does not have any e-TIN. Tax shall not be deducted in case of supply of direct materials that constitute cost of sales or cost of goods sold of a trading company or a manufacturing company If imported goods are supplied then new formula to deduct tax at source: Formula is B-A B= Tax to be deducted as per this section A= Tax already deducted at import stage u/s 53	U/S 52 Rule 16	<table><tr><td>Up to Tk. 15,00,000=</td><td>2%</td></tr><tr><td>From Tk. 15,00,000 to 25,00,000=</td><td>3%</td></tr><tr><td>From Tk. 25,00,001 to 1 crore=</td><td>4%</td></tr><tr><td>From Tk. 1crore to 5 crore=</td><td>5%</td></tr><tr><td>From Tk. 5,crore to 10 crore=</td><td>6%</td></tr><tr><td>Above Tk. 10 crore =</td><td>7%</td></tr></table> Oil/gas supply: [1] In case of oil supplied by oil marketing companies: up to Tk. 200,000= Nil, Where the payments exceeds Tk. 200,000= 0.60% [2] oil supplied by dealer of oil marketing company except petrol pump station @ 1% [3] oil supplied by oil refinery @ 3% [4] gas supplied by gas transmission company to gas distribution company @ 3% [5] gas supplied by gas distribution company @ 3%		Up to Tk. 15,00,000=	2%	From Tk. 15,00,000 to 25,00,000=	3%	From Tk. 25,00,001 to 1 crore=	4%	From Tk. 1crore to 5 crore=	5%	From Tk. 5,crore to 10 crore=	6%	Above Tk. 10 crore =	7%
Up to Tk. 15,00,000=	2%															
From Tk. 15,00,000 to 25,00,000=	3%															
From Tk. 25,00,001 to 1 crore=	4%															
From Tk. 1crore to 5 crore=	5%															
From Tk. 5,crore to 10 crore=	6%															
Above Tk. 10 crore =	7%															
5.	Royalties,Franchise and Fees for using certain services	U/S 52A	10% If the base amount does not exceed Tk.25,00,000 12% If the base amount exceeds Tk.25,00,000													
6.	Certain services Rate of deduction depends on the base amount. If it is up to Tk.25,00,000 one rate and if it is above Tk.25,00,000/ then another rate.	U/S 52AA	<table><tr><th>Services</th><th>Rate</th></tr><tr><td>Advisory/consultancy service</td><td>10% or 12%</td></tr><tr><td>[2] Professional/technical service</td><td>10% or 12%</td></tr><tr><td>[3] Catering, cleaning, collection & recovery, private security, manpower supply, creative media service, public relation service, event management,</td><td></td></tr></table>	Services	Rate	Advisory/consultancy service	10% or 12%	[2] Professional/technical service	10% or 12%	[3] Catering, cleaning, collection & recovery, private security, manpower supply, creative media service, public relation service, event management,						
Services	Rate															
Advisory/consultancy service	10% or 12%															
[2] Professional/technical service	10% or 12%															
[3] Catering, cleaning, collection & recovery, private security, manpower supply, creative media service, public relation service, event management,																

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment
	<p>The rate of deduction will be 50% higher if the payee does not have any e-TIN. If commission and gross bill both are shown at bill amount then TDS will be the higher of the following two:</p> <ol style="list-style-type: none"> 10% or 12% on commission B x C x D where B=Gross bill C=10% for Sl. 3 and 3.5% for SL .no 4 D=Rate applicable on commission 		<p>training workshop etc. organization and management services and any other services of similar nature</p> <p>(a) Commission 10% or 12%</p> <p>(b) Gross bill 1.5% or 2%</p>
			<p>[4] Media buying agency service</p> <p>(a) Commission 10% or 12%</p> <p>(b) Gross bill .5% or .65%</p>
			[5] Indenting commission 6% or 8%
			[6] Meeting fees, training fees, honorarium 10% or 12%
			[7] Mobile network operator, technical support service provider or service delivery agents engaged in mobile banking operations 10% or 12%
			[8] Credit rating service 10% or 12%
			[9] Motor garage workshop 6% or 8%
			[10] Private container port or dockyard service 6% or 8%
			[11] Shipping agency commission 6% or 8%
			[12] Stevedoring / berth operation commission 10% or 12%
			[13] Transport provider including ride sharing services 3% or 4%
			[14] Any other services 10% or 12%
7.	C & F agent	52AAA	10%
8.	Handmade cigarette	52B	10% of the value of the banderols
9.	Compensation against acquisition of property	52C	2% of the amount of such compensation, if property situated within City Corporation, Paurashava, Cantonment Board, otherwise 1%
10.	Interest on savings instruments	52D	<p>5%</p> <p>(1) Not applicable on wage earners' development bond, US dollar investment bond, Euro premium bond, Euro investment bond, Pound sterling investment bond and Pound sterling premium bond</p> <p>(2) Not applicable on pensioners' savings certificate if cumulative investment during the year does not exceed Tk.5,00,000)</p> <p>(3) TDS @ 5% will also be applicable on interest on savings instruments purchased by any Fund.</p>
11.	Workers' Participation Fund	52DD	5%
12.	Brick manufacturers	52F	<p>Tk. 45,000/- for 1 section brick field. Tk. 75,000/- for 1.5 section brick field Tk. 90,000/- for 2 section brick field</p> <p>Tk. 1,50,000 for automatic brick field</p>
13.	L/C commission	52I	5%
14.	Travel agency commission	52JJ	0.30% on the total value of the tickets or any charge for carrying cargo (excluding embarkation fees, travel tax, flight safety insurance, security tax and airport tax)

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment
			<p>+</p> <p>TDS on incentive bonus, performance bonus or any other benefit called by whatever name will have to be calculated applying a formula $(A \text{ divided by } B) \times C$ A=Incentive bonus B=Commission or discount and C=0.30%</p>
15.	New or Renewal of trade license	52K	Tk. 500/- or Tk. 300/ or Tk.100/ depending on the location.
16.	Freight forward agency commission	52M	15%
17.	Rental power	52N	6%
18.	Salary of foreign technician serving in a diamond cutting industry	52O	5%
19.	For services from convention hall, conference center etc.	52P	5%
20.	Deduction of tax from resident for any income in connection with any service provided to any foreigner	52Q	10% However TDS will not be applicable against foreign remittance from sale of software or related services if the income from such sales is tax exempted as per 6th Schedule(Part-A)Para-33
21.	International phone call	52R	(1)1.5% on IGW (2)7.5% on ICX and ANS company (3) In case of outgoing international call the ICX/ANS company shall deduct tax @7.5% on the whole amount so paid.
22.	Any payment by the life insurance company to policy holder in excess of total premium	52T	5% Not applicable in case of death of policy holder
23.	Local L/C	52U	3% of the amount paid or credited in relation to purchase of goods for the purpose of trading or of reselling after process or conversion 1% of the amount paid or credited in relation to goods invoiced to a person under a financing arrangement.
24.	Revenue sharing or any license fee or any other fees or charges paid to regulatory authority by the mobile phone operator company	52V	10%
25.	Import	53	5% or 2%(But in case of iron, steel , vessels and other floating structures for breaking up the rate is Tk. 800/ per ton)
26.	House rent	53A	5%
27.	Shipping business of a resident	53AA	5% of total freight received or receivable in or out of Bangladesh. 3% of total freight received or receivable from services rendered between two or more foreign countries.
28.	Export of manpower	U/S 53B Rule 17C	10%

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment
29.	Export of certain items	U/S 53BB	1%
30.	Collection of tax from Member of Stock Exchanges	U/S 53BBB	0.05% (other than bond sale)
31.	Export of any goods except items mentioned at section 53BB	U/S 53BBBB	1%
32.	Public auction	U/S 53C Rule 17D	5% (in case of tea auction the rate is 1%)
33.	Actors and actresses	53D	10%(no deduction required if payment does not exceed Tk.10,000)
34.	Export cash subsidy	53DDD	3%
35.	Commission, Discount or Fees	53E	10% on commission If any company sells its products to its distributors at a price lower than MRP, then @5% on DPX5%. However in case of cigarette the rate would be 3% of the difference between the DP and MRP 1.5% from the payment in relation to the promotion of the company or its goods to any person engaged in the distribution/marketing of the goods of the company.
36.	Commission paid to agent of foreign buyer	53EE	10%
37.	Interest and share of profit on saving, fixed and term deposits	53F, Rule -17	If there is 12 digit TIN then 10% otherwise 15%. On fund the rate is only 5%.
38.	Collection of tax from persons engaged in Real Estate or Land Development business	U/S 53FF	(i) Tk. 1,600 per square meter for building or apartment for residential purpose situated at Gulshan Model Town, Banani, Baridhara, Motijheel commercial area and dilkusa commercial area of Dhaka and TK 6,500 per sq meter building for commercial purpose. TK. 1,500 per SQ meter for residential building situated at Defense Officers Housing Society (DOHS), Dhanmondi Residential Area, Lalmatia Housing Society, Uttara Model Town, Bashundhara Residential Area, Dhaka Cantonment Area, Karwan Bazar Commercial Area of Dhaka and Khulshi Residential Area, Panchlaish Residential Area and Agrabad of Chittagong; and TK 5,000 per SQ meter building used for commercial purpose. (ii) Tk. 1,000 or Tk.700 or Tk.300 per square meter for residential building or apartment if situated in areas other than areas mentioned in sub-clause (i) and TK. 3,500 or Tk.2,500 or Tk. 1,200 per SQ meter for commercial building 5% of deed value in case of property situated in any city corporation, paurashava or cantonment board. 2% of deed value in case of property situated in places other than any city corporation, paurashava or cantonment board.
39.	Insurance commission	53G	5%
40.	Remuneration or fees of surveyors of General Insurance Company	53GG	15%

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment	
41.	Transfer of property	53H	Different rates as per Rule-17II based on locality of the land or land & building.	
42.	Registration of leasehold property	53HH	4%	
43.	Interest on deposit of Post Office Savings Bank account	53 I	10%	
44.	Rental value of vacant land or plant or machinery	53 J Rule 17BB	5%.	
45.	Direct advertising to Newspaper or Magazine or private TV Channel or radio station or website	53 K	3%	
46.	Collection of tax from transfer of shares by the sponsor shareholders of a company listed on stock exchange	53 M	5%	
47.	Transfer of shares of shareholder in Stock Exchange	53N	15%	
48.	Cash dividend	54	Company @20% Person other than company @10% if there is 12digit TIN otherwise 15% However TDS will not be applicable to any distribution of taxed dividend to a resident company if such taxed dividend enjoys tax exemption as per 6th Schedule(Part-A) Para-60	
49.	Lottery	55	20%	
50.	Income of non-residents	56	Services	Rate
TDS under this section will be deemed to be the minimum tax and shall not be subject to refund or set-off or adjustment]			Legal service	20%
			Advertisement making or digital marketing	15%
			Advertisement broadcasting	20%
			Advisory or consultancy service	20%
			Air transport or water transport	7.5%
			Architecture, interior design or landscape design	20%
			Artist, singer or player	30%
			Legal service	20%
			Capital gain received- From securities not listed with stock exchange-	15%
			From securities listed with stock exchange but income not exempted in their home country----	10%
			Machinery rent	15%
			Salary or remuneration	30%
			Survey for oil or gas exploration	5.25%
			Certification	20%
			Charge or rent for satellite, airtime or frequency	20%
			Contractor, sub-contractor of manufacturing, process or conversion.	7.5%

Sl.	Head of TDS	Ref.	TDS rate / Amount/ Comment	
			Supplier	7.5%
			Management or event management	20%
			Insurance premium	10%
			Interest, commission. Royalty, license any payment related to intangibles.	20%
			Dividend-	
			(a) Company ---	20%
			(b) Other than company	30%
			Pre –shipment inspection service	20%
			Professional service	20%
			Exploration or drilling in petroleum operations	5.25%
Any service for making connectivity between oil or gas field and its export point	5.25%			
			Any other payment	30%

14.8 Minimum tax: section 82C

Minimum tax on income on sources from which tax has been deducted or collected under certain sections shall be the following:

1. Contract, Supply, manufacture, process or conversion, printing, packaging or binding except gas supply (section 52+Rule 16)
2. Royalty and technical know-how fee (section 52A)
3. C&F agency commission (section 52AAA)
4. Band roll in case of Handmade cigarette (section 52B)
5. Compensation against acquisition of property (section 52C)
6. Interest on all type of savings instruments (section 52D)
7. Rental power (section 52N)
8. International gateway service(IGS)on international phone call (section 52R)
9. Import [other than raw-material import] (section 53+Rule 17A)
10. Shipping Agency commission(section 53AA)
11. Manpower export(section 53B+Rule 17C)
12. Export (section 53BB & 53BBBB)
13. Shareholder of Stock Exchange (section-53BBB)
14. Non-resident courier (section-53CCC)
15. Public auction (section 53C+Rule 17D)
16. Export cash subsidy (section 53DDD)
17. Distributorship commission (section 53E)
18. Foreign buyer's agent (section 53EE)
19. Salary of foreign technicians serving in a diamond cutting industry (section-52 O)
20. Bank interest of Public University, MPO enlisted educational institution, ICAB, ICMA and ICSB and bank interest of different funds.(section 53F (1) (c) & 53F(2))
21. Real Estate and Land Development business (section-53FF)
22. Insurance commission (section 53G)

23. Surveyor of General Insurance (section-53GG)
24. Sale of property (section-53H)
25. Travel agent (section-53JJ)
26. Capital gain from transfer of shares by sponsor shareholders (section 53M)
27. Transfer of share of shareholder of stock exchange (section 53N)
28. Income from lottery (section 55)

- a. Tax deducted or collected at source from the sources mentioned in sub-section (2) shall not be adjusted against refund due for earlier year or years or refund due for the assessment year from any source.
- b. Income from the sources mentioned in sub-section (2) shall be determined on the basis of the tax deducted or collected at source and the rate or rates of tax applicable for the assessment year. If the tax so calculated is higher than the minimum tax under clause (a) the higher amount shall be payable on such income.
- c. Where the regular tax calculated for any assessment year is higher than the minimum tax regular tax shall be payable.
- d. Where any surcharge, additional interest, additional amount etc. is payable, it shall be paid in addition to minimum tax.
- e. Where tax has been mistakenly deducted or collected in excess or deficit of the due amount then minimum tax shall be computed based on the due amount.

Illustration

Mr. B, owner of a brokerage house, has presented the following information in the assessment year 2018-19:

• Income from house property	Tk. 250,000
• Income from other businesses	Tk. 205,000
• TDS against brokerage commission	Tk. 50,000
• Income shown as brokerage commission	Tk. 10,00,000

Determine the total income of Mr. X considering the provisions of the section 82C.

Solution

As TDS against brokerage commission is minimum tax as per section 82C, so the first step is to calculate total income excluding any item where tax has been settled finally. So, total income excluding finally tax settled item:

Income from house property	Tk. 250,000
Income from other business	<u>Tk. 205,000</u>
	Tk. 455,000

So, tax on such income will be:

On 1 st	Tk. 2,50,000	0%	Nil
On next	Tk. 2,05,000	10%	<u>Tk. 20,500</u>
		Total	Tk. 20,500

Now, income against finally settled tax liability (minimum tax) of Tk. 50,000 will be calculated as follows on the basis of regular rate:

On the rest of 2nd slab (Tk. 4,00,000 – Tk. 2,05,000) = Tk. 1,95,000 @ 10% =Tk.19,500

So, rest Tk. 30,500 tax will be for the 3rd slab where tax rate is 15%.

So, against this TDS of Tk. 30,500 the applicable income will be $(30,500/15 \times 100) = \text{Tk. } 2,03,333$

So, income against which Tk. 50,000 finally settled TDS will be (Tk. 1,95,000 + Tk. 2,03,333 = Tk. 3,98,333.

But As brokerage commission Tk. 10, 00,000 income has been shown i.e. excess income has been shown by (Tk. 10,00,000 - Tk. 3,98,333) = Tk. 6,01,667. So on this additional income of Tk. 6,01,667 tax will be charged on regular rate as per provision of section 82C.

14.9 Other issues relating to TDS

Consequences of failure to deduct tax: section 57

Where a person required by or under the provisions of this Chapter to deduct, collect or pay to the credit of the Government tax, and in the cases mentioned in section 54, the principal officer and the company of which he is the principal officer, fails to pay the tax in accordance with the provisions of this Chapter, he or it shall -

- (a) without prejudice to any other consequences to which he or it may be liable, be deemed to be an assessee in default in respect of the tax; and
- (b) in addition to such tax, pay an amount at the rate of two percent per month of such tax for the period commencing on the date following the expiry of the time within which it is to be paid under section 59 and ending on the date of the actual payment of the tax.

Where the DCT in the course of any proceedings under the Ordinance finds any person, required by or under the provisions of this chapter to deduct, collect or pay to the credit of the Government tax, who has failed to deduct, collect or pay the tax in accordance with the provisions of this chapter, shall, notwithstanding the provisions of section 137, take necessary action for realization of such tax along with the additional amount payable under clause (b) of sub-section (1) from the person deemed to be an assessee in default under clause (a) of that sub-section.

Where a person issues a false certificate of deduction without actual deduction then he will be personally liable to the tax not deducted but certificate issued. **[Section 57A]**

Certificate of tax deduction etc., section 58

Every person who deducts or collects tax as required by the provisions of this Chapter shall, at the time of making any payment in relation to which tax has been deducted or collected, furnish to the person to or from whom such payment or collection has been made, a certificate to the effect that the tax has been deducted or collected specifying therein-

- a) The name and TIN of the person from whom tax has been deducted or collected.
- b) the amount deducted or collected;
- c) section reference under which tax has been deducted
- d) the particulars of the payment; and
- e) such other particulars as may be prescribed.

Payment to Government of tax deducted: section 59

All sums deducted or collected as tax under the provisions of this Chapter shall be paid within the prescribed time by the person making the deduction or collection to the credit of the Government or as the Board may direct.

Unauthorized deduction prohibited: section 60

Save as provided in the Ordinance, no person shall charge, withhold, deduct or collect any sum, directly or indirectly as tax and where any sum is so charged withhold, deducted or collected, it shall be paid in the manner provided in section - 59.

Power to levy tax without prejudice to other mode of recovery of tax: sec. 61

The power to levy tax by deduction or collection under this Chapter shall be without prejudice to any other mode of recovery.

Credit of tax deducted or collected at source: section 62

Any deduction or collection of tax made and paid to the account of the Government in accordance with the provisions of this Chapter shall be treated as a payment of tax on behalf of the person from whose income the deduction or collection was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him there from on the production of the certificate furnished under section – 58 in the assessment, if any made for the following year under the Ordinance :

Provided that, if such person or such owner obtains, in accordance with the provisions of the Ordinance, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund :

Provided further that where such person or owner is a person whose income is included under the provisions of section 43 (4) or (5) or section 104 or 105 or 106 in the total income of another person, such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

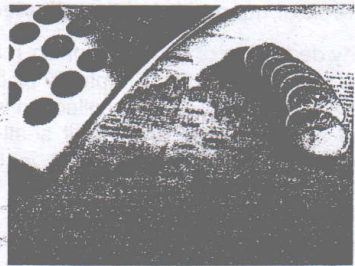
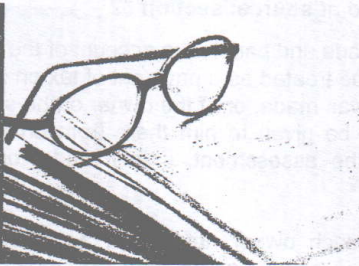
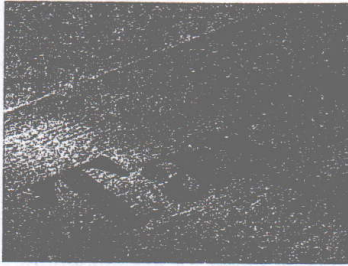
Payment of tax where no deduction is made: section 63

The tax under the Ordinance shall be payable by the assessee direct-

- (a) in any case where tax has not been deducted or collected as required by, and in accordance with, the provisions of this Chapter ;
- (b) in any case where the amount deducted or collected is found, after regular assessment, to be less than the tax due from the assessee, to the extent of deficiency ; and
- (c) in the case of income in respect to which no provision has been made for deduction or collection of tax under the provisions of this Chapter.

Self-assessment questions:

- (a) Discuss the various types of income from which tax is required to be deducted or collected at source under the provisions of the Income Tax Ordinance 1984.
- (b) State the provisions regarding information to be furnished to the Tax Authorities in connection with payment of salary, interest, dividend, collection of tax from property, payment to non-resident, and other sources under the provisions of the Income Tax Ordinance 1984.
- (c) Mention the application for final payment of tax liability under section 82C.
- (d) What are the consequences of failure of deducting taxes in time at prescribed rates or failure of depositing deducted taxes within time?



Chapter 15

Advance payment of tax

Contents

Introduction

Examination context

Topic list

15.1	Requirement to pay advance tax
15.2	Computation of advance tax
15.3	Installments of advance tax
15.4	Estimate of advance tax
15.5	Advance payment of tax by different types of assessee
15.6	Failure to pay installments
15.7	Levy of simple interest for failure to pay advance tax
15.8	Credit of advance tax
15.9	Interest payable by Government on excess payment of advance tax
15.10	Interest payable by the assessee on deficiency in payment of advance tax
15.11	Payment of tax on the basis of return

Worked Examples

Introduction

Learning objectives

- Recognize different classes of assesses required to pay advance tax.
- Mention the time limit and manner of payment of advance tax.
- Explain the basis and methods of computing advance tax.
- Define the consequences of non-payment or insufficient payment of advance tax.
- Mention the situation when government will pay simple interest @ 10% to assessee.

Practical significance

Depending on assessed or provisionally assessed income, an assessee may require to pay advance tax. In some cases the new assessee also requires to pay advance tax. The calculation of amount, rate, estimation and installment of advance tax are guided by the Ordinance. The assessee shall get the credit of advance tax. In case of excess or deficit payment of advance tax an assessee may receive or pay the interest from or to the Government. Tax paid in advance shall be adjusted at the time of tax payment on the basis of the return.

Payment of advance tax is important as failure of doing so will make the assessee being 'assessee in default'. Advance tax is a requirement and it reduces tax burden at the end of the year. Thus, it is helpful to the assessee as a method of tax planning. Professional accountants are required to help their clients in that regard.

Stop and think

Advance tax is required to pay on total income excluding income from agriculture and capital gain. Both old and new taxpayers are required to pay advance tax if they fulfill the threshold limit set by tax law. Do you think how advance payment of tax is made?

Working context

In corporate sectors, advance payment of taxes is very common as in many cases income exceeded the threshold limit of Tk. 400,000. In some cases the accountants are asking for advice on how and when the advance taxes should be paid. The service for estimation and calculation of advance tax is required by some assessee. Chartered Accountants can provide the service to their clients relating to payment of advance tax so that the clients can avoid any penalty for non-compliance of tax law in this regard.

Detailed knowledge about the payment of advance tax in compliance with tax law can help accountants to support their clients significantly.

Syllabus links

You will also meet this area of taxation at advance stage.

• Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the requirement of advance payment of tax.
- Demonstrate how the computation, estimation and payment procedures of advance tax are made.
- Describe the consequences of payment or not payment of advance tax.
- Identify different classes of assesses required to pay advance tax.
- Mention the time and installments of payment of advance tax.
- Illustrate the application of 75% test to compute simple interest in case of deficit.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates need to remember the methods of computing advance tax, basis of advance tax, 75% test, computation of simple interest @ 10% on deficit amount of tax and other complexities. In practical problem at case study level calculation of advance tax may be asked for with different dates when installment falls due.

15.0 ADVANCE PAYMENT OF TAX

Section overview

- ➔ An assessee, both old and new, may require to pay advance tax.
- ➔ Advance taxes are paid on income excluding income from agriculture and capital gain.
- ➔ The assessee shall get the credit for advance tax.
- ➔ If the amount of advance tax paid along with TDS is less than 75% of due tax, assessee is required to pay simple interest @10% on such deficit.
- ➔ Government will also pay simple interest @10% if advance tax for any reason exceeds due tax.
- ➔ If the assessee fails to pay advance tax, he will be the assessee in default.

15.1 Requirement to pay advance payment of tax: section 64

Except as provided in section 64(2), tax shall be payable by an assessee during each financial year by way of advance payment of tax, hereinafter referred to as 'advance tax', in accordance with the provisions hereafter made in this Chapter, if the total income of the assessee for the latest income year in respect of which he has been assessed by way of regular assessment, or has been provisionally assessed under the Ordinance, exceeds Tk. 4,00,000.

Nothing in section 64(1) shall apply to any income classifiable under the heads 'agricultural income' and 'capital gains'.

15.2 Computation of advance tax: section 65

The amount of advance tax payable by an assessee in a financial year shall be the amount equal to the tax payable on his total income of the latest income year as assessed on regular basis or provisionally, as the case may be, as reduced by the amount of tax required to be deducted or collected at source in accordance with the preceding provisions of this Chapter.

The tax payable under section 65(1) shall be calculated at the rates in force in respect of the financial year referred therein.

15.3 Installments of advance tax: section 66

Advance tax shall be payable in four equal installments on the fifteenth day of September, December, March and June of the financial year for which the tax is payable.

However, if before the fifteenth day of May of the year, an assessment of the assessee is completed in respect of an income year, later than that on the basis of which the tax was computed under section 65, the assessee shall pay in one installment on the specified date or in equal installments on the specified dates, if more than one falling after the date of the said assessment, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original computation.

15.4 Estimate of advance tax: section 67

Where, an assessee who is required to pay advance tax under section 64 estimates, at any time before the last installment is due, that the tax payable by him for the relevant assessment year is likely to be less than the amount of tax as computed under section 65, he may, after giving to the Deputy Commissioner of Taxes an estimate of the tax payable by him, pay such estimated amount of advance tax, as reduced by the amount, if any, already paid, in equal installments on the due dates of payment under section 66.

The assessee may furnish a revised estimate of such amount at any time before any time before any of such installments become payable and may thereby adjust any excess or deficiency, by reference to the amount already paid by him under this section, in any subsequent installment or installments payable in such financial year.

15.5 Advance payment of tax by different types of assessee: section 68

In case of existing assessee:

In case of existing assessee, advance tax is to be calculated on the basis of his last assessed income. If his last assessed total income exceeds Tk. 400,000/ [excluding agricultural income and capital gain (other than capital gain from sale of share)] he is required to pay advance tax. (See-64)

In case of new assessee:

A new assessee who has not previously been assessed shall also required to pay advance tax if his current year's income [excluding agricultural income and capital gain (other than capital gain from sale of share)] is likely to exceed Tk. 400,000/ (See.68)

In case of cigarette manufacturer:

A cigarette manufacturer shall pay advance tax @ 3% on net sales in every month. This monthly advance tax will be adjusted against quarterly installments.

The formula of net sale=A-B
Where A=Gross sale
B=VAT & SD (if any)

15.6 Failure to pay installments of advance tax: section 69

Where, an assessee who is required to pay advance tax fails to pay any installment of such tax, as originally computed or, as the case may be, estimated, on the due date, he shall be deemed to be an assessee in default in respect of such installment.

15.7 Levy of interest for failure to pay advance tax: section 70

Where, in respect of an assessee who is required to pay advance tax, it is found in the course of regular assessment that advance tax has not been paid in accordance with the provisions of this Chapter, there shall be added, without prejudice to the consequences of the assessee being in default under section 69, to the tax as determined on the basis of such assessment, simple interest thereon calculated at the rate and for the period specified in section 73.

15.8 Credit of advance tax: section 71

Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax, shall be treated as a payment of tax in respect of the income of the period which would be the income year for an assessment for the year next following the year in which it was payable and shall be given credit for in the assessment of tax payable by the assessee.

15.9 Interest payable by Government on excess payment of advance tax: section 72

The Government shall pay simple interest at 10% per annum on the amount by which the aggregate sum of advance tax paid during a financial year exceeds the amount of tax payable by him as determined on regular assessment.

The period for which interest under section 72(1) shall be first day of July of the year of assessment to the date of regular assessment in respect of the income of that year or a period of two years from the said first day of July, whichever is shorter?

Illustration:

Mr. Robi calculated advance tax for the income year 2015-16 as per the latest assessed income of taka 1,000,000. Regular assessment for the assessment year 2016-17 was completed on June 30, 2017 and profit assessed amounts to taka 800,000. Applicable tax rate is 40%. Calculate interest payable by the government on excess payment.

Calculation of excess advance tax paid:

Amount of advance tax paid on the basis of latest assessed income

(40% of taka 1,000,000)

Tk. 400,000

Tax as per regular assessment (40% of taka 800,000)

Tk. 320,000

Excess advance tax paid

Tk. 80,000

Interest payable by the government: (10% on taka 80,000)

Tk. 8,000

Note: Interest will be paid for a period from 1st July 2016 (first day of assessment year) to June 30, 2017 (day of regular assessment) or for a maximum of 2 years, whichever is shorter.

15.10 Interest payable by the assessee on deficiency in payment of advance tax: section 73

Where, in any financial year, an assessee has paid advance tax on the basis of his own estimate and the advance tax so paid together with the tax deducted at source, if any, under this Chapter is less than 75%, of the amount of tax payable by him as determined on regular assessment, the assessee shall pay, in addition to the balance of tax payable by him, simple interest @ 10% per annum on the amount by which the tax so paid and deduction falls short of 75% of the assessed tax.

The period for which interest under section 73(1) shall be payable shall be the period from the first day of July of the assessment year to the date of regular assessment or a period of two years from the said first day of July of the assessment year whichever is shorter.

Notwithstanding anything contained in sections 73(1) and (2) -

1. where tax is paid under section 74, or
2. provisional assessment has been made under section 81 but regular assessment has not been made, the simple interest shall be calculated in accordance with the following provisions-
 - a. up to the date on which tax under-section 74 or provisionally assessed, was paid;
 - b. thereafter, such simple interest shall be calculated on the amount by which the tax so paid falls short of the said assessed tax.
3. Where, as a result of appeal, revision or reference, the amount on which interest was payable under section 73(1) has been reduced; the amount of interest payable shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of tax that is refundable.

Illustration

For the assessment year 2017-18, an assessee has latest assessed income of taka 1,000,000. But, he wants to pay advance tax for the year on the basis of his own estimate that amounts to taka 800,000. Regular tax rate is 40%. Regular assessment for the assessment year 2017-18 was completed on February 28, 2018 resulting taka 1,200,000 profit including taka 80,000 from capital gain and taka 220,000 from agricultural income.

Calculate the amount of excess or shortfall and explain the consequences for the same.

Income eligible to apply advance tax as per regular assessment is taka 900,000 (taka 1,200,000 – taka 80,000 – taka 220,000), excluding capital gain and agricultural income.

Tax liability as per regular assessment (40% of taka 900,000)

Tk. 360,000

Advance tax paid (40% of taka 800,000)

Tk. 320,000

Shortfall

Tk. 40,000

75% test: The deficit or shortfall is required to be tested for charging simple interest.

75% of tax liability as per regular assessment (75% of taka 360,000) Tk. 270,000

Tax paid actually

Tk. 320,000

Shortfall in case of 75% test

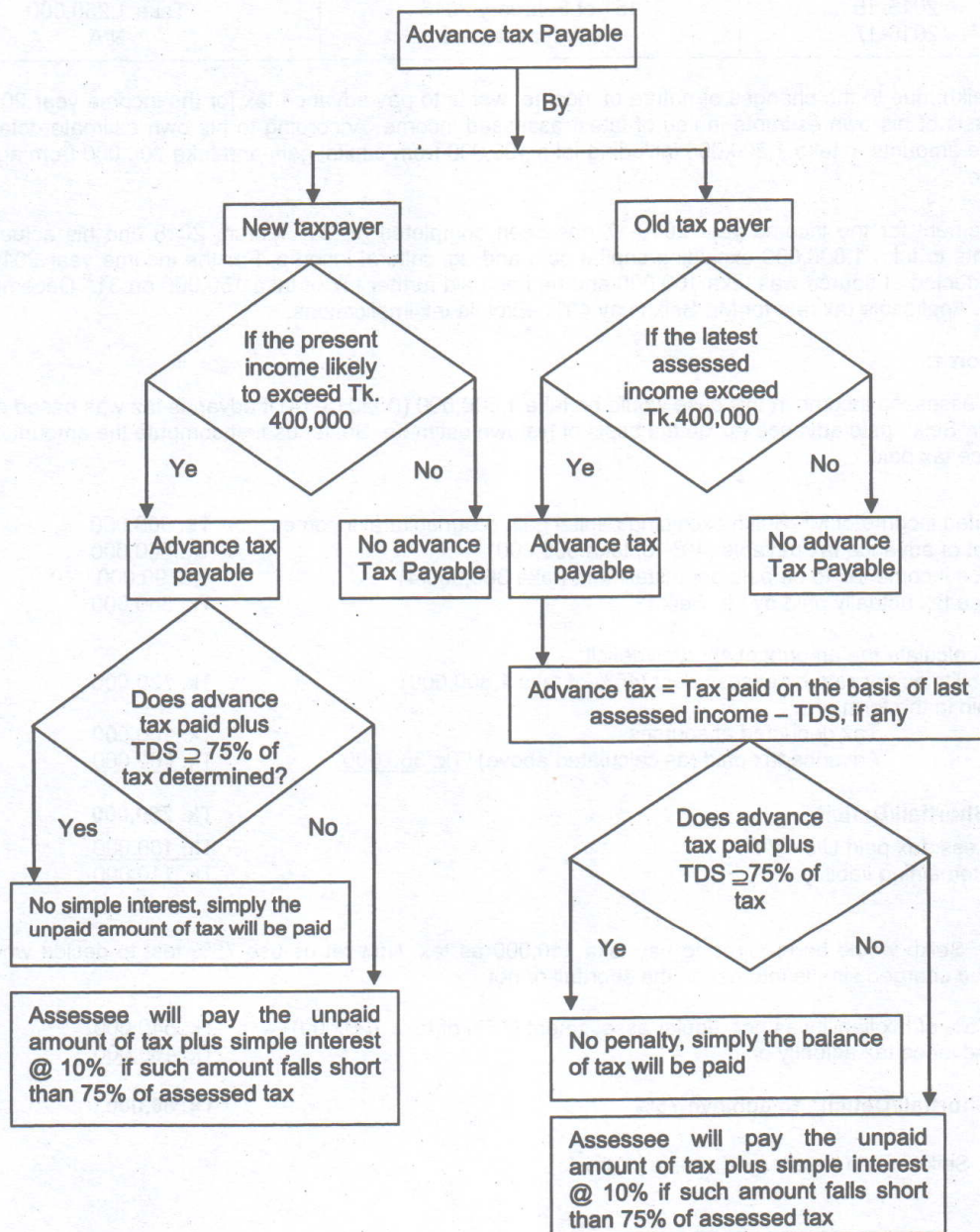
nil

Consequence: In this case, the assessee is required to pay the shortfall of taka 40,000 only. There is no question of charging simple interest as 75% is covered.

5.11 Payment of tax on the basis of return: section 74]

Every person who is required to file a return u/s 75, 77, 78, 89(2), 91(3), or 93(1) shall pay the amount of tax payable on the basis of such return as reduced by the amount of any tax deducted from his income u/s 48 and 64 on or before the return filed.

A person, who without reasonable cause fails to pay tax as required under this section, shall be deemed to be an assessee in default.



Worked examples and solutions

Worked example 1

Mr. Halim Seikh has the following records of assessment for various years:

Income years	Date of assessment	Total assessed income
2012-13	21 st of February, 2014	Taka 600,000
2013-14	10 th of March, 2016	Taka 1,500,000
2014-15	30 th of May, 2015	Taka 1,200,000
2015-16	15 th of February 2016	Taka 1,250,000
2016-17	Not yet assessed	N/A

Mr. Seikh, due to the changes of nature of income, wants to pay advance tax for the income year 2016-17 on the basis of his own estimate in lieu of latest assessed income. According to his own estimate, total taxable income amounts to taka 1,200,000 including taka 100,000 from capital gain and taka 200,000 from agricultural income.

Assessment for the income year 2016-17 has been completed on 31st March, 2018 and his actual income amounts to taka 1,800,000 excluding capital gain and agricultural income. For the income year 2016-17, his tax deducted at source was taka 100,000 and he has paid further tax of taka 150,000 on 31st December 2017 u/s 74. Applicable tax rate for Mr. Seikh say 40%. Explain tax implications.

Solution 1:

Latest assessed income in this case would be taka 1,500,000 (IY 2013-14) if advance tax was based on that. But, Mr. Seikh paid advance tax on the basis of his own estimate. So, let us first compute the amount of advance tax paid.

Estimated income of Mr. Seikh excluding capital gain & agricultural income	Tk. 900,000
Amount of advance tax payable (40% of taka 900,000)	Tk. 360,000
Advance income tax to be paid per installment (taka 360,000/4)	Tk. 90,000
Advance tax actually paid by Mr. Seikh	Tk. 360,000

Let us calculate the amount of shortfall/deficit:

Tax liability as per regular assessment (40% of taka 1,800,000)	Tk. 720,000
Tax paid in the form of	
Tax deducted at sources	Tk. 100,000
Advance tax paid (as calculated above) <u>Tk. 360,000</u>	<u>Tk. 460,000</u>

Shortfall/Deficit	Tk. 260,000
Less: tax paid U/s – 74	Tk. 150,000
Remaining liability	Tk. 110,000

So, Mr. Seikh would be required to pay taka 110,000 as tax. Now let us use 75% test to decide whether he would be charged simple interest on the shortfall or not.

75% of tax liability as per regular assessment (75% of taka 720,000)	Tk. 540,000
Advance tax actually paid	<u>Tk. 460,000</u>

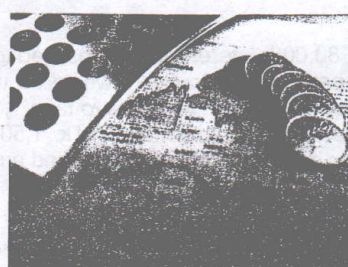
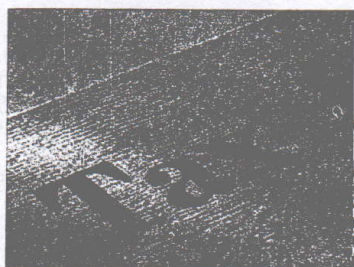
Shortfall/Deficit to achieve 75%	Tk. 80,000
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So, Mr. Seikh would be charged simple interest:

On taka 80,000; interest will be charged @ 10% for a period from 1st July 2017 to 31st December 2017 So, total interest payable by Mr. Seikh would be taka 4,000 $[(80,000 \times 10\% \times 6/12)]$. Thus, total amount due to Mr. Seikh by the tax department amounts to taka 1,14,000 (110,000 + 4,000). Interest is calculated up to December, 2016 as because tax was paid u/s 74 Tk. 1,50,000 on 31st December, 2017. Once tax is deposited, simple interest cannot be calculated on that deposited amount.

Self-assessment question

1. Discuss briefly the provisions of the Income Tax Ordinance 1984 with regard to the following:
 - (a) The assessee who are required to pay advance tax and the nature of incomes which are to be left out of consideration for this purpose;
 - (b) The basis on which advance payments of tax should be calculated for old assessee and new assessee, and the due dates of payment thereof;
 - (c) The interest payable by Government on excess payment and interest chargeable to assessee on shortfall, in respect of advance payment of tax.
2. In what situation, government will pay interest to assessee?
3. Mr. Idris Mia calculated advance tax for the income year 2017-18 as per the latest assessed income of taka 1,000,000. Regular assessment for the assessment year 2016-17 was completed on June 30, 2017 and profit assessed amounts to taka 700,000. Applicable tax rate is say 40%. Calculate simple interest payable by the government (if any) on excess payment of advance tax.



Chapter 16

Return of income

Contents

Introduction

Examination context

Topic list

16.1	Requirement to file return of income
16.2	Form of submission of return
16.3	Signature and verification of return
16.4	Tax Day
16.5	Delay interest for filing return after Tax Day even after taking permission
16.6	Documents to be submitted along with the return of income
16.7	Return of withholding tax
16.8	Obligation to furnish Annual Information Return
16.9	Concurrent jurisdiction
16.10	Notice for filing return
16.11	Filing of revised return
16.12	Production of accounts and documents
16.13	Statement of assets, liabilities and expenditure and Life style statement
16.14	Production of other information as per different sections and rules at the time of submission of return or in other circumstances
16.15	Return Form

Introduction

Learning objectives

- Explain the requirement to file return of income
- State the procedure of filing the return.
- Identify the forms and documents to be submitted with the return of income.
- Mention the information need to be provided with return.
- Prescribe different return forms.

Practical significance

Every person shall file or caused to be filed a return of his income or the income of any other person in respect of which he is assessable to tax. There are some rules and guidelines for submission of return. The total procedure covering the time limitation for submitting the return, documents and information to be provided with the return of income and duly filled return need to have the declaration and authentication.

Production of accounts and documents, statements of assets and liabilities, income statement, statement of individual regarding particulars of life style are the essential elements in case of submission of return.

Learning of income tax is finally reflected in submitting the form of return where income from different heads is reported and net tax liability is computed. This is the reporting of assesses to the income tax authority disclosing relevant information.

Stop and think

Do you realize that submission of return is an obligatory responsibility for every assessee by any means? Do you know that the production of supporting accounts, forms and documents and timely submission of return with authenticated declaration about the true information are very significant?

Working context

In case of submission of return, the accountants can guide their clients how to prepare their return with all supporting documents. Accountants should have the clear understanding about the legal procedures for submission of return.

Detailed understanding about the rules and procedures for filing return give the opportunity to the accountants in practice to help their as tax advisers.

Syllabus links

The topics covered in this chapter are very important for students, accountants, tax advisers and even for the assessee at large for compliance with the tax rules and procedures regarding submission of return.

Examination context

Exam requirements

In the examination, students may be required to:

- Define the requirement to file return of income.
- Mention the due date of submission of return.
- Identify the forms, documents and information to be submitted with return.
- Define the term of IT 10B and IT 10BB in case of filing return.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Students have historically prepared well for this area of the syllabus.

16.0 RETURN AND STATEMENT

Section overview

- ➔ An assessee shall file or cause to be filed a return of income in the prescribed form.
- ➔ The return of income shall be signed and verified
- ➔ Return shall be submitted within Tax Day or maximum within the extended date allowed by the DCT.
- ➔ The DCT can serve notice u/s 77/93 for filing return if not submitted within Tax Day.
- ➔ The return for individual assessee shall be accompanied by IT-10B and IT-10BB
- ➔ Form of return for individual assessee and company is different. Moreover different return form is applicable for different types of assessee. A separate form for spot assessment also available.
- ➔ Tax Day is different for company and other than company.

16.1 Requirement to file return of income: section 75(1)

- (1) Every person shall file or cause to be filed, with the DCT, a return of his income or the income of any other person in respect of which he is assessable to tax under the Ordinance-
 - (a) if his total income during the income year exceeded the maximum amount which is not chargeable to tax under the Ordinance, or
 - (b) if he was assessed to tax for any one of the three years immediately preceding that income year [Section 75(1)(b)].

However, any non-resident Bangladeshi may file his return of income along with bank draft equivalent to the tax liability, if any, on the basis of such return, to his nearest Bangladesh Mission and the Mission will issue a receipt of such return with official seal and send the return to the Board [Proviso to Section 75(1)].

- (2) A person who is not required to furnish return under section 75(1), shall file a return of his income during the income year on or before the specified date if he:
 - (a) Fulfils any of the following conditions, namely-
 - (i) owns a motor car;
 - (ii) owns a membership of a club registered under the Value added Tax Act, 1991;
 - (b) runs any business or profession having trade license from a city corporation, a paurashava or a union parishad,;
 - (c) has registered with a recognized professional body as a doctor, dentist, lawyer, income tax practitioner, chartered accountant, cost and management accountant, engineer, architect or surveyor or any other similar profession;
 - (d) has registered with the NBR as an ITP.
 - (e) member of a chamber of commerce and industries or a trade association;
 - (f) Runs for an office of any paurashava, city corporation, or a Member of Parliament;
 - (g) participates in a tender floated by the government, semi-government, autonomous body or a local authority;
 - (h) Serves in the Board of Directors of a company or a group of companies.
- (3) Return submission is compulsory for company, NGO, Co-operative society, firm, AOP, shareholder director or a shareholder employee of a company, a partner of a firm or an employee of the Govt. an authority, corporation, body or unit if he draws monthly basic salary of Tk. 16,000 or more and every person who participates in a ride sharing arrangement by providing motor vehicle.

- (4) However return submission is not mandatory for MPO enlisted educational institution, a public university, any fund, non-resident company having no permanent establishment in Bangladesh and non-resident individual having no fixed base in Bangladesh.

16.2 Form of submission of return of income :section 75(3)

The return under section 75 shall be furnished in the prescribed form setting forth therein such particulars and information as may be required thereby including the total income of the assessee.

16.3 Signature and verification of return :section 75(3)(b)

The return of income shall be signed and verified-

- (i) in the case of an individual, by the individual himself; where the individual is absent from Bangladesh, by the individual concerned or by some person duly authorized by him in this behalf; and when the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (ii) in the case of Hindu undivided family, by the Karta, and, where the Karta is absent from Bangladesh or is mentally incapacitated from attending to his affairs by any other adult member of such family;
- (iii) in the case of a company or local authority, by the principal officer thereof;
- (iv) in the case of a firm, by any partner thereof, not being a minor;
- (v) in the case of any other association, by any member of the association or the principal officer thereof; and
- (vi) in the case of any other person, by that person or by some person competent to act on his behalf;

16.4 Due date of submission of return of income: section 75(5)

- (1) The return of income shall be filed, unless the date is extended under section 75(6)-

Bank, Insurance and other non-banking Financial Institution	15th September
A company which is a subsidiary or holding company of a parent company incorporated outside Bangladesh if such company requires to follow a different financial year for the purpose of consolidation of its accounts with the parent company;	Within 15th. of the 7th month from the end of the income year
All other company	15th January
Other than company	30th November

- (2) The last date for the submission of return as specified in section 75(5) may be extended by the Deputy Commissioner of Taxes up to 2 months from the date so specified and further extend the date up to 2 months with the approval of the Inspecting Joint commissioner of Taxes [Section 75(6)].

16.5 Delay interest for late submission of return: section 73A

Delay interest will be imposed @ 2% per month on the difference between the tax assessed on total income for the assessment year and tax paid in advance along with tax deducted or collected at source.

Period of delay interest: the period will start from the first day immediately following the Tax day to:

- [1] The date of filing return where return is filed
 - [2] The date of regular assessment where return is not filed
- However the period shall not exceed one year

16.6 Documents to be submitted along with the return of income : section 75(3)(c)

The return of income shall be accompanied by-

- (1) Every person, being an individual assessee, shall furnish statements in the forms and manners as prescribed in respect of the total assets, liabilities and expenses of the person or the spouse, minor children and dependents of the person as on the last date of the income year if the person

- (a) has, in the last date of the income year, a gross wealth exceeding taka twenty lakh; or
 - (b) owns a motor car; or
 - (c) has made an investment in a house property or an apartment in the city corporation area:

Provided that any person, being an individual assessee, who is not required to submit the statement mentioned in this subsection may voluntarily submit such statement.

- (2) Every person, being an individual assessee, shall furnish in the forms and manners as prescribed, a statement of expenses relating to the life style of such person:

Provided that an individual, not being a shareholder director of a company, having income from salary or from business or profession may opt not to submit such statement if his total income does not exceed three lakh taka.

- (3) where any statement as mentioned in sub-section (1) is not submitted by a person being an individual, the DCT may require, by notice in writing, to submit the same by person within the time as mentioned in the notice."I
 - (4) In case of a company, a statement of accounts audited by a chartered accountant. A separate income computation sheet is also to be submitted if income as per audited accounts and income shown at return differ.

16.7 Return of withholding tax: Section 75A + Section 75AA

- (1) Every company, co-operative society and NGO shall file or cause to be filed, with the DCT where it is being assessed, a return of withholding tax as per provisions of Chapter VII of this Ordinance.
- (2) The return under sub-section (1) shall be-
 - (a) furnished in the prescribed form setting forth therein such particulars and information as may be required thereby;
 - (b) signed and verified by the principal officer thereof;
 - (c) filed half yearly, unless the date is extended under sub-section (3), by the 31st day of January and 31st day of July of the financial year for which the tax is deducted or collected;
 - (d) Accompanied by a statement of deduction/collection of tax along with copy of treasury challans or pay orders.
- (3) The last date for the submission of such return as specified in sub-section (2) may be extended by the DCT maximum up to 15 days from the date so specified.
- (4) If the DCT finds that the deducting authority fails to deduct or collect tax at source then he shall deem such person an assessee in default.

The DCT may select a number of withholding tax returns with the approval of the NBR. No such return shall be selected for audit after the expiry of 4 years from the end of the year in which the return was filed. **Section 75AA**

16.8 Obligation to furnish Annual Information Return: section 75B

- (1) Government may, by notification in the official gazette, require any person or group of persons responsible for registering or maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, to furnish an Annual Information Return, in respect of such specified financial transaction.
- (2) The Annual Information Return referred to in sub-section (1) shall be furnished to the Board or any other income tax authority or agency, in such form, manner and within such time as may be prescribed.

16.9 Concurrent jurisdiction :section 75C

Board may, by general or a special order in writing, direct that in respect of all or any proceedings relating to receiving of return of income and issuance of acknowledgement thereof in accordance with the provisions of section 75, 77, 78, 89(2), 91(3) or 93(1), the powers and functions of the Deputy Commissioner of Taxes shall be concurrently exercised by such other authority as may be specified by the Board.

16.10 Notice for filing return: section 77

The Deputy Commissioner of Taxes may, at any time after expiry of the date specified in section 75, by a notice in writing, require—

- a. any person, other than a company, to file a return of his total income as provided in that section if, in the opinion of the Deputy Commissioner of Taxes the total income of such person was, during the income year, of such amount as to render liable to tax;
- b. any company to file a return of its total income, if it is not filed.
- c. The return under section 77(1) shall be filed within such period, not being less than twenty-one days, as may be specified in the notice or within such extended period as the Deputy Commissioner of Taxes may allow.

16.11 Filing of revised return: section 78

Any person who has not filed a return as required by section 75 or 77 or who having filed return, discovers any omission or incorrect statement therein, may, without prejudice to any liability which he may have incurred on this account, file a return or a revised return, as the case may be, at any time before the assessment is made.

16.12 Production of accounts and documents: section 79

The Deputy Commissioner of Taxes may, by notice in writing, require an assessee who has filed a return under section 75, or to whom a notice has been issued under section 77, to produce or cause to be produced such accounts, statements and documents on such date as may be specified in the notice, such accounts, statements and documents including those relating to any period, not being earlier than three years prior to the income year, as he may consider necessary for the purpose of making an assessment under the Ordinance.

16.13 Statement of assets and liabilities and life style statement: section 80

The DCT may, by notice in writing, require an assessee to file by the date specified in the notice statements giving particulars in respect of the following unless they have already been given in or with return filed under section 75, 77 or 78 namely:

The total assets, liabilities and expenses of the assessee as on the date or dates specified in the notice;

The total assets, liabilities and expenses of the spouse, minor children and dependents of the assessee as on the date or dates so specified; and

Any assets transferred by the assessee to any person during the period or periods so specified, and the consideration therefore;

Particulars of life style of the assessee.

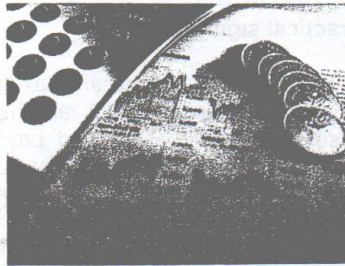
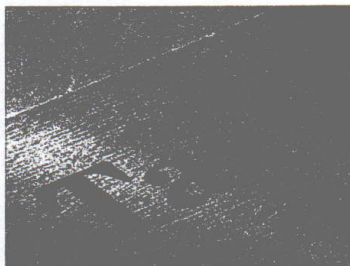
The statements to be filed under sub-section (1) shall be prepared in such form and verified in such manner as may be prescribed.

16.14 Production of other information as per different sections and rules at the time of submission of return or in other circumstances

U/s – 108 & Rule - 23	Information regarding payment of salary
U/s – 109 & Rule - 20	Information regarding payment of interest
U/s – 110 & Rule - 19	Information regarding payment of dividend
Rule - 10	Particulars to be furnished on interest on securities by a person other than the Government
Rule - 12	Particulars to be furnished by persons making deductions of tax at source
Rule-18(7)	Statement of TDS under chapter-vii
Rule - 21	Statement of deduction of tax under the head "salaries"
Rule-24,Rule 25 & 25A	Form of return
Rule - 41	Particulars for depreciation allowance
Rule - 47	Furnishing of an abstract of the PF account of an employee
Rule – 58B	Return, statements, etc., that may be required to be furnished

16.15 Return Form

IT-11GA 2016 IT-11GHA 2016 IT-11CHA 2016 IT-11GAGA	For individual taxpayers For Company taxpayers For taxpayers other than individual and company For spot assessment
IT-10B	Statement of assets, liabilities and expenditure
IT-10BB	Statement of life style



Chapter 17

Assessment

Contents

Introduction

Examination context

Topic list

17.1	Introduction to assessment
17.2	Provisional assessment u/s 81
17.3	Assessment on the basis of correct return u/s 82
17.4	Universal self-assessment u/s 82BB
17.5	Minimum tax on income of certain person: u/s 82C
17.6	Minimum tax for companies and firms on the basis of gross receipts u/s 82C
17.7	Spot assessment u/s 82D
17.8	Assessment on the basis of hearing u/s 83(2)
17.9	Assessment on the basis of report of Chartered Accountant u/s 83AAA
17.10	Best judgment assessment u/s 84
17.11	Presumptive tax assessment on owners of road transport and water vessels
17.12	Various specialized and emergency assessments

Introduction

Learning objectives

- Illustrate the various types of assessment.
- Identify the conditions, rules and procedure for different classes of assessment.
- Define the limitation for assessment.

Practical significance

Assessments of income and tax liability are very significant for every assessee. There are different types of assessment such as provisional assessment, assessment on the basis of correct return, assessment under simplified procedures, universal self-assessment, final settlement of taxes on income of certain persons, spot assessment, assessment after hearing, assessment on the basis of report of a chartered accountant, best judgment assessment etc.

Even there are various specialized/emergency assessments such as assessment in case of discontinued business, person leaving Bangladesh, deceased person, income escaping assessment etc. So there is no way to avoid tax assessment if there is taxable income.

For every classes of assessment there are either some conditions, rules and procedures specified for assessee and/or for tax authorities.

Stop and think

Did you realize how important is the assessment for any assessee either individual or company? Do you think nobody can avoid tax assessment in any way if he is required to be assessed under tax law?

Working context

Assessment of tax is very important for every assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on conditions, rules and procedures for different assessments has the importance in case of required support for clients' tax assessment in many ways.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, students may be required to:

- Identify the different types of assessment.
- Define the provisional assessment.
- Characterize the assessment on the basis of correct return.
- Define the assessment under which tax liability shall be deemed as finally discharge tax liabilities.
- Define the specialty of universal self-assessment.
- Recognize the rules and procedures for spot assessment.
- Illustrate the assessment after hearing and best judgment assessment.
- Define the assessment on the basis of report of a chartered accountant.
- Recognize the presumptive tax assessment on owners of road transport vehicles.
- Define the assessment of partnership firms.
- Typify the assessment in case of change in constitution of a firm and constitution of new successor firm.
- Typify the assessment in case of succession to business otherwise than on death and assessment of discontinued business.

- Define the assessment in case of partition of Hindu undivided family.
- Characterize the assessment in case of persons leaving Bangladesh, deceased person and income escaping assessment.
- Identify the limitation for doing assessment.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

17.0 ASSESSMENT

Section overview

- ➔ There are different classes of assessment of total income and tax payable.
- ➔ The conditions, rules and methods of various assessments are different.
- ➔ It is not easy for any person to escape assessment who is required to be assessed.
- ➔ There are certain limitations of assessment.

17.1 Introduction to assessment

Assessment to tax is an important stage in the whole cycle for tax collection. It is used to mean, sometimes, the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer [C.I.T.V Khemchand Rahdas. 1938 I.T.R 441, 416(PC)]. The meaning to be assigned to the word "assessment" has to be understood in each section with reference to the context in which it has been used [A.N. Lakshman Shenoy V.I.T.O. 958 I.T.R 275, 941(SC)].

17.2 Provisional assessment: section 81

- (1) The Deputy Commissioner of Taxes may, at any time after 1 July of the year for which the assessment is to be made, proceed to make, in a summary manner, a provisional assessment of the tax payable by the assessee on the basis of the return and the accounts and documents, if any, accompanying it and where no return has been filed, on the basis of the last assessment including an assessment under this section.
- (2) In making a provisional assessment under this section, the Deputy Commissioner of Taxes shall-
 - a) rectify any arithmetical errors in the return, accounts and documents;
 - b) allow, on the basis of the information available from the return, accounts and documents, such allowances as are admissible under the Third Schedule and any loss brought forward under section 38 or 39 or 41.
- (3) For the purposes of payment and recovery, the tax as determined to be payable upon provisional assessment shall have effect as if it were determined upon regular assessment.
- (4) The tax paid or deemed to have been paid under Chapter VII, in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.
- (5) Any amount paid or deemed to have been paid towards provisional assessment under this section shall be deemed to have been paid towards regular assessment; and the amount paid or deemed to have been paid towards provisional assessment in excess of the amount found payable after regular assessment shall be refunded to the assessee.
- (6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on merit of any issue which may arise in the course of regular assessment.
- (7) There shall be no right of appeal against a provisional assessment under this section.

Guarantee Certificate to be furnished by a tax payer in Bangladesh in the case of persons who are neither employees nor representatives of any firm.

We/I,.....certify (name in block letters) that
.....is known to us/me and that we/I undertake to pay his/her tax liability, if any, when determined.

Signature of the guarantor.....

Name and address.....

TIN

Circle

Tax clearance certificate issued by the DCT shall be in the following form:-

Book No.	Serial No.	Book No.	Serial No.
----------	------------	----------	------------

Counterfoil of certificate under section 107 of the IT Ordinance, 1984 (XXXVI of 1984)

Date

Name

Present address

Permanent address

Business of profession

Date of arrival in Bangladesh

Date of departure

(as stated in the application)

Date up to which the certificate is Valid

Challan No. and date of payment of tax

Signature of left-hand thumb impression

of the Person named in the

certificate

Deputy Commissioner of Taxes

..... / Circle.

Signature of the left-hand

Circle.

TAXES DEPARTMENT

Certificate under section 107 of The Income Tax Ordinance, 1984 (XXVI of 1984)

Office of the DCT

..... Circle

Place

Date

This is to certify that

of (whose signature

or thumb impression is affixed below) has no

liability made satisfactory arrangements for

his/her liabilities under the Income Tax

Ordinance, 1984 (XXXVI of 1984), the Income

tax Act, 1922 (XI of 1922), the Gift-tax Act,

1963 (XIV of 1963) Gift Tax Act, 1990 (XLIV

of 1990) or the wealth tax Act, 1963 (XV of

1963). This certificate is valid up to

..... Signature

Deputy Commissioner of Taxes, Signature

of left-hand /Circle. Thumb impression of

the Person named In the Certificate

Exemption certificate issued by the DCT shall be in the following form:

Book No.	Serial No.	Book No.	Serial No.
----------	------------	----------	------------

Counterfoil of certificate under section 107 Of the IT Ordinance, 1984 (XXXVI of 1984)

Date

TAXES DEPARTMENT

Certificate under section 107 of The Income Tax Ordinance, 1984 (XXVI of 1984)

Office of the Deputy Commissioner of Taxes

But the conditions are:

1. Return is to be accompanied by proper evidences in support of tax free income (if any)
2. Return is to be accompanied by bank statement in support of taking loan (if any) exceeding taka 5 lac.
3. Return does not show any receipt of gift
4. Return does not show any income on which reduced tax rate is applicable.
5. Return does not show any refund
6. The assessee has to comply with the provisions of sections 75A, 108 and 108A.

If the return is selected for audit, then DCT will proceed to make fresh assessment by issuing notice under section 83(1) for hearing and he will make assessment within 2 years from the end of the assessment year. Otherwise it will be barred by time limitation. Assessment can be done under section 83(2) or under section 84 as the situation permits. If a revised return is filed against notice of audit and the DCT is satisfied that the findings of audit has duly been reflected in the revised return and tax and any other applicable amount has been fully paid, then he may accept the revised return and issue a letter of acceptance to the assessee.

17.5 Minimum tax: section 82C

The following 28 heads of deduction shall be deemed to be the minimum tax:

- 1) Contract, supply, manufacture, process, conversion, printing, packaging & binding (sec 52+Rule 16)
- 2) Royalties (section 52A)
- 3) C&F agency commission (section 52AAA)
- 4) Band roll in case of Handmade cigarette (section 52B)
- 5) Compensation against acquisition of property (section 52C)
- 6) Interest on all type of savings instruments (section 52D)
- 7) Travel agent (section-53JJ)
- 8) Rental power (section 52N)
- 9) Salary of foreign technicians serving in a diamond cutting industry (section-52 O)
- 10) International gateway service(IGS)on international phone call (section 52R)
- 11) Import [other than raw-material import] (section 53+Rule 17A)
- 12) Shipping Agency commission(section 53AA)
- 13) Manpower export (section 53B+Rule 17C)
- 14) Export (section 53BB + 53BBBB)
- 15) Shareholder of Stock Exchange (section-53BBB)
- 16) Public auction (section 53C+Rule 17D)
- 17) Non-resident courier (section 53CCC)
- 18) Export cash subsidy (section 53DDD)
- 19) Distributorship Commission (section 53E)
- 20) Foreign buyer's agent (section 53EE)
- 21) Bank interest of Public University, MPO enlisted institution, ICAB, ICMA, ICSB and all funds [Sec. 53F]
- 22) Real Estate and Land Development business (section-53FF)
- 23) Insurance commission (section 53G)
- 24) Surveyor of General Insurance (section-53GG)
- 25) Sale of property (section-53H)
- 26) Capital gain from transfer of shares by sponsor shareholders (section 53M)
- 27) Transfer of share of shareholder of stock exchange (section 53N)
- 28) Income from lottery (section 55)

Income from the above 28 heads for which minimum tax is applicable shall be determined in regular manner and tax shall be calculated by using regular rate on such income. If the tax so calculated is higher than the minimum tax, the higher amount shall be payable on such income.

No need to compute income through back calculation from the following 5 sources

Sl no	Sources of income	Section	Amount that will be taken as income	Tax rate to be applied
1	Compensation against land acquisition	52C	Total amount of compensation from land acquisition	2% or 1% depending on the location
2	Interest on savings instruments	52D	Gross interest	5%
3	Export cash subsidy	53DDD	Actual gross cash subsidy	5%
4	Bank interest of certain organization and Fund.	53F(1)(c) + 53F(2)	Gross bank interest	10% and 5%
5	Transfer of property	53H	Deed value	Applicable rate of source tax and as per rule made there under.

17.6 Minimum tax for companies and partnership firms on the basis of gross receipts

Sl	Classes of assessee	Rate of minimum tax on gross receipt
1	Manufacturer of cigarette, biri, chewing tobacco, smokeless tobacco or any other tobacco products.	1%
2	Mobile phone operator	0.75%
3	Others	0.60%

17.7 Spot assessment: section 82D and Rule – 38B:

Notwithstanding anything contained in the Ordinance, where an assessee, not being a company, who has not previously been assessed under the Ordinance, carrying on any business or profession in any shopping centre or commercial market or having a small establishment, the Deputy Commissioner of Taxes may fix the tax payable by him in such manner and at such rate as may be prescribed and the receipt obtained for payment of such tax shall be deemed to be an order of assessment under section 82 [section 82D].

Rule 38B:

(a) Where an assessee carrying on business-

Initial capital investment to be shown	Rate of tax (Tk)	Applicability
Upto Tk 6 lakh	3,000/-	For the assessee not located under any city corporation or paurashava of district headquarters"
Upto Tk 7 lakh	3,500/-	For the assessee located at Paurashava in district headquarters and other area excluding city corporation;
Upto Tk 1 lakh	4,000/-	For assessee of any area;
Upto Tk 10 lakh	5,000/-	For assessee of any area;
Upto Tk 15 lakh	10,000/-	For assessee of any area'

a. Where an assessee carrying on profession as a lawyer or doctor-

Initial capital investment to be shown	Rate of tax (Tk)	Applicability
Upto 3 years	3,000/-	For the assessee not located under any city corporation or paurashava of district headquarters;
Upto 4 years	3,500/-	For the assessee located at Paurashava in district headquarters and other area excluding city corporation;
Upto 5 years	4,000/-	For assessee of any area;
Upto 10 years	5,000/-	For assessee of any area;

The assessee shall, with the help of the DCT, fill up a return of income in form B as prescribed in rule 24(1) and after paying requisite tax submit the same to the DCT on the spot.

The tax fixed under rule 38B shall remain in force for two subsequent assessment years, and the receipt of the payment of such tax shall be deemed to be an order of assessment under section 82 of the IT Ordinance, 1984.

17.8 Assessment on the basis of hearing: section 83

- (1) Where a return or revised return has been filed under Chapter VIII and the DCT is not satisfied without requiring the presence of the person who filed the return or the production of evidence that the return is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, to appear before the DCT, or to produce or cause to be produced before him or at his office, any evidence in support of the return.
- (2) The DCT shall, after hearing the person appearing, or considering the evidence produced in pursuance of the notice under section 83(1) and also considering such other evidence, if any, as he may require on specified points, by an order in writing assess, within 30 days after the completion of the hearing or consideration, as the case may be, the total income of the assessee and determine the sum payable by him on the basis of such assessment, and communicate the order to the assessee within 30 days next following.

Students should carefully note that for completion of assessment u/s 83(2), the DCT should issue the following notices.

- (a) Notice u/s 83(1) - Requiring further information about the return filed
- (b) Notice u/s 79- Production of books of accounts and various statements

In case of failure to serve any of the above notices, the assessment made under this section is rendered defective and unenforceable. If the assessee files a revised return before the assessment is completed, the DCT should issue fresh notices u/s 83(1) and 79.

17.9 Assessment on the basis of report of a Chartered Accountant: section 83AAA

Where a return or revised return is filed under Chapter VII by an assessee being a company and the Board has reasonable cause to believe that the return or revised return is incorrect or incomplete, the Board may appoint a registered chartered accountant to examine the accounts of that assessee.

The chartered accountant appointed under sub-section 83AAA(1) shall exercise the powers and functions of the DCT as referred to in section 79 and sections 113(a), (b), (c), (d) and (e).

The chartered accountant, after examination of the accounts of that assessee, shall submit a report in writing to the Board along with findings within a time as may be specified by the Board.

On receipt of the report referred to in sub-section 83AAA (3), the Board shall forthwith forward the report to the concerned DCT for consideration.

On receipt of the report under sub-section 83AAA(4), the DCT shall serve a notice upon the assessee under section 83(1).

The DCT shall, after hearing the person appearing and considering the evidences produced including the findings stated in the report received under section 83AAA(5) and also considering the other evidences, by an order in writing, assess within 30 days after the completion of hearing or consideration, as the case may be, the total income of an assessee and shall determine the sum payable by the assessee on the basis of such assessment, and communicate the said order to the assessee within 30 days from the date of such order.

17.10 Best judgment assessment: section 84

Where any person fails-

to file the return required by a notice under section 77 and has not filed a return or revised return under section 78; or to comply with the requirements of a notice under section 79 or 80; or to comply with the requirements of a notice under section 83(1);

the DCT shall, by an order in writing, assess the total income of the assessee to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment; and in the case of a firm, may refuse to register it or may cancel its registration if it is already registered, and communicate such order to the assessee within 30 days next following [section 84(2)].

Where, in the opinion of the Board, a best judgment assessment made by a DCT under section 84(1) shows lack of proper evaluation of legal and factual aspects of the case which has resulted in an arbitrary and injudicious assessment, the action leading to such assessment made by the said DCT shall be construed as misconduct [section 84(2)].

17.11 Presumptive tax assessment on owners of road transport

(a) Rate of presumptive tax in the case of owners of bus, minibus, coaster, taxicab, prime mover, truck, tank lorry, pick-up, human hauler, maxi and auto-rickshaw [SRO no.160 dated 26/06/2014]

The changed tax rates are as follows:

SL	Type of vehicle	First registration 10 years or less	First registration more than 10 years
i.	Bus (capacity more than 52 seats)	Tk.12,500	Tk.6,500
ii.	Bus (capacity 52 seats or less)	Tk.9,000	Tk.4,500
iii.	A/C luxury bus	Tk.30,000	Tk.15,000
iv.	Bus (double Decker)	Tk.12,500	Tk.6,500
v.	A/C mini bus/coaster	Tk.12,500	Tk.9,000
vi.	Other mini bus/coaster	Tk.5,000	Tk.2,500
vii.	Prime mover	Tk.19,000	Tk.10,000
viii.	Truck and tank lorry (capacity more than 5 ton)	Tk.12,500	Tk.7,500
ix.	Truck and tank lorry (capacity more than 1.5 ton to 5 ton)	Tk.7,500	Tk.4,500
x.	Truck / pick-up (capacity 1.5 ton or less) and all type of human hauler, maxi and auto-rickshaw	Tk.3,000	Tk.2,500
xi.	A/C taxi cab	Tk.9,000	Tk.4,500
xii.	Non A/C taxi cab	Tk.3,000	Tk.1,500

No question will be raised by the DCT as to the source of investment in bus, mini-bus, coaster, prime mover, truck, tank lorry, pick-up van, maxi or auto-rickshaw used for transportation of goods if additional tax at 1000% of the tax mentioned in items A and B above is paid as tax on the investment at the time of the first time registration of such transport.

(b) Rate of presumptive tax in the case of owners of inland water vessels carrying passengers or cargo, coaster, dump barge carrying goods [SRO no.162 dated 26/06/2014]

The changed tax rates are as follows:

Sl No	Type of inland water vessel	First registration 10 years or less	First registration more than 10 years
01	Passenger carrying vessel	@Tk.100 per passenger day time capacity	@Tk.40 per passenger day time capacity
02	Goods carrying cargo or coaster	@Tk.135 per gross ton capacity	@Tk.60 per gross ton capacity
03	Goods carrying dump burger	@Tk.100 per gross ton capacity	@Tk.50 per gross ton capacity

17.12 Various specialized assessments

(1) Assessment of firms: section 85

- (a) Notwithstanding anything contained in the Ordinance, where the assessee is a firm and the total income of the firm has been assessed under section 82, 83, or 84, as the case may be, the tax payable by the firm shall be determined on the basis of the total income of the firm.
- (b) Whenever any determination is made in accordance with the provisions of section 85(1), the DCT shall, by an order in writing, notify to the firm the amount of tax payable by it, (if any), the amount of the total income on which the determination has been based and the apportionment of the amount of income between the several partners.

(2) Assessment in case of change in constitution of a firm: section 86

- (1) Where, at the time of assessment of a firm, it is found that a change has occurred in the constitution of the firm, the assessment shall be made on the firm as constituted at the time of making the assessment:

Provided that

- (a) the income of the year shall, for the purpose of inclusion in the total income of the partners, be apportioned between the partners who, in such income year, were entitled to receive the same; and
 - (b) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.
- (2) For the purposes of this section, there is a change in the constitution of a firm-
 - (a) where all the partners continue with a change in their respective shares or in the shares of some of them, or
 - (b) where one or more persons who were partners continue to be so with a change by cessation of one or more partners or addition of one or more new partners.

(3) Assessment in case of new successor firm: section 87

Where, at the time of assessment on a firm, it is found that a new firm has been constituted to succeed the firm to which the assessment relates and it cannot be covered by section 86, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 88 relating to assessment in case of succession to business.

(4) Assessment in case of succession to business otherwise than on death: sec-88

- (1) Where, a person, carrying on any business or profession, has been succeeded therein otherwise than on death by another person in any income year, and the successor continues to carry on that business or profession-
 - (a) the predecessor shall be assessed, in respect of the income of the income year in which the succession took place, for the period up to the date of succession, and
 - (b) the successor shall be assessed, in respect of the income of the income year, for the period after the date of succession.
- (2) Notwithstanding anything contained in section 88(1), where the predecessor cannot be found, the assessment of the income year in which the succession took place up to the date of succession and of the income year or years preceding that year shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor; and the provisions of the Ordinance shall, so far as may be, apply accordingly.
- (3) Where any sum payable under this section in respect of the income of a business or profession cannot be recovered from the predecessor, the Deputy Commissioner of Taxes shall record a finding to that effect, and thereafter the sum payable by the predecessor shall be payable by and recoverable from the successor who shall be entitled to recover it from the predecessor.

(5) Assessment in case of discontinued business: section 89

- (1) Without prejudice to the provision of section 87, where any business or profession is discontinued in any financial year, and assessment may be made in that year, notwithstanding anything contained in section 16, on the basis of the total income of the period between the end of the income year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income year.
- (2) Any person discontinuing any business or profession in any financial year shall give to the Deputy Commissioner of Taxes a notice of such discontinuance within fifteen days thereof; and such notice shall be accompanied by a return of total income in respect of the period between the end of the income year and the date of such discontinuance and that financial year shall be deemed to be the assessment year in respect of the income of the said period.
- (3) Where, a person fails to give the notice required by sub-section 89(2), the Deputy Commissioner of Taxes may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income from the business or profession up to the date of its discontinuance.
- (4) Where, an assessment is to be made under section 89(1), the Deputy Commissioner of Taxes may serve-
 - (a) on the person whose income is to be assessed;
 - (b) in the case of a firm, on the person who was a partner of the firm at the time of discontinuance of the business or profession; and
 - (c) in the case of a company, on the principal officer of the company; a notice to furnish within such time, not being less than seven days, a return of his total income giving such particulars and information as are required to be furnished with a return to be filed under section 75 along with such other particulars, records and documents as may be specified in the notice.
- (5) The provisions of the Ordinance shall, so far as may be, apply to a notice under section 89(4) for the purpose of assessment of tax as if it were a notice under section 77.

(6) Assessment in case of partition of a Hindu Undivided Family (HUF): section 90

- (1) A Hindu family hitherto assessed as a Hindu undivided family shall be deemed, for the purposes of the Ordinance, to continue to be a Hindu undivided family except where, and in so far as, a finding of partition has been given under this section in respect of that family.
- (2) Where, at the time of an assessment of a Hindu undivided family, it is claimed by any member thereof that a partition has taken place amongst the members of the family; the Deputy Commissioner of Taxes shall make an enquiry there into after giving notice to all the members of the family.
- (3) On the completion of the enquiry, the Deputy Commissioner of Taxes shall record a finding as to whether there has been a partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.
- (4) In the case of a finding under section 90(3) that the partition of the undivided family took place after the expiry of the income year, the total income of the income year of the undivided family shall be assessed as if no partition has taken place; and each member or group of members of the family shall, in addition to any tax for which he or it may be separately liable, be jointly and severally liable for the tax on the income of the family so assessed.
- (5) In the case of finding under section 90(3) that the partition of the undivided family took place during the income year; the total income of the undivided family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and each member or group of members of the family shall, in addition to any tax for which he or it may be separately liable, be jointly and severally liable for the tax on the income of that period as so assessed.
- (6) Notwithstanding anything contained in this section, if the Deputy Commissioner of Taxes finds after completion of the assessment of Hindu undivided family that the family has already effected

a partition, the tax shall be recoverable from every person who was a member of the family before the partition; and every such person shall be jointly and severally liable for tax on the income of the family so assessed.

- (7) For the purposes of this section, the several liability of any member or group of members of a Hindu undivided family shall be computed according to the partition of the property of the undivided family allotted to him or it at the partition.
- (8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition of a Hindu undivided family as they apply in relation to levy and collection of tax in respect of any such period.

(7) Assessment in case of person leaving Bangladesh: section 91

- (1) Where it appears to the Deputy Commissioner of Tax that any person may leave Bangladesh during the current financial year or shortly after its expiry and that he has no intention of returning, an assessment may be made in that year, notwithstanding anything contained in section 16, on the basis of the total income of such person if-
 - (a) he has been previously assessed, for the period from the expiry of the last income year of which income has been assessed to the probable date of his departure from Bangladesh; and
 - (b) he has not been previously assessed, of the entire period of his stay in Bangladesh up to the probable date of his departure there from.
- (2) Assessment under section 91(1) shall be made-
 - (a) in respect of each completed income year included in the period referred to in section 91(1), at the rate at which tax would have been charged had it been fully assessed; and
 - (b) in respect of the period from the expiry of the last of the completed income years to the probable date of departure, at the rate in force for the financial year in which such assessment is made and that financial year shall be deemed to be the assessment year in respect of the income of the said period.
- (3) For the purpose of making an assessment under this section, the Deputy Commissioner of Taxes may serve a notice upon the person concerned requiring him to file, within such time, not being less than seven days, as may be specified in the notice-
 - (a) a return in the same form and verified in the same manner as a return under section 75 setting forth, along with such other particulars as may be required by the notice, his total income for each of the completed income years comprised in the relevant period referred to in section 91(1); and
 - (b) an estimate of his total income for the period from the expiry of the last of such completed income year to the probable date of his departure from Bangladesh.
- (4) All the provisions of the Ordinance shall, so far as may, apply to the notice under section 91(3) for purpose of assessment of tax as if it were a notice under section 77.
- (5) Nothing in this section shall be deemed to authorize a Deputy Commissioner of Taxes to assess any income which has escaped assessment or has been under assessed or has been assessed at too low a rate or has been the subject of excessive relief under the Ordinance but in respect of which he is debarred from issuing a notice under section 93.

(8) Assessment of income of a deceased person: section 92

- (1) Where a person dies, his legal representative shall be liable to pay any tax or other sum payable under the Ordinance which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased; and the legal representative of the deceased shall, for the purposes of the Ordinance, be deemed to an assessee. However, before deeming the legal representative of the deceased to be an assessee, a notice to that effect shall be issued to him by the Deputy Commissioner of Taxes.

- (2) For the purposes of making an assessment of the income of the deceased and recovery of tax-
 - (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued from the stage at which it stood on the date of the death of the deceased; and
 - (b) any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative; and all the provisions of the Ordinance shall, so far as may be, apply accordingly.
- (3) The liability of legal representative under the Ordinance shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.
- (4) For the purposes of section 92 and other provisions of the Ordinance in which the rights, interest and liabilities of the deceased are involved, 'legal representative' includes an executor, an administrator and any person administering the estate of the deceased.

7. **ESCAPED PAYMENT (SEC. 93)**

The following situations shall be deemed to have escaped payment:

- The income or any part of income has escaped assessment
- The income has been under assessed
- Excessive loss, relief, deduction or allowance in the return has been claimed
- Tax liability has been shown or computed lower by
 - [a] Concealment/misreporting of any income
 - [b] Concealment/misreporting of any assets
 - [c] Concealment/misreporting of any expenditure
 - [d] Concealment/misreporting of any particulars at IT10B or IT10BB
- Income has been under assessed or has been assessed at a lower rate than due tax rate
- Taxable income has been shown as tax exempted income.
- Excessive depreciation allowance or any other allowance has been claimed
- Tax has been paid or computed lower than due amount by reason of lower tax base

Preconditions:

- i) Section 93 can be initiated by the DCT if he has reason to believe that any sum payable by an assessee has escaped payment.
- ii) Before initiating the proceeding under section 93 previous approval in writing from the IJCT is to be taken, except in a case where a return has not been filed u/s 75/77
- iii) Notice under section 93 can be issued
 - At any time where no return was filed and no assessment was made
 - within 6 years from the end of the assessment year in case where no return was filed but assessment was completed
 - Within 5 years from the end of the assessment year in other cases. Provided that only Commissioner of Taxes can extend one year more if assessee did not make full disclosure of his particulars in the return or statement or in other particulars submitted with the return or in the assessment proceedings.

- (1) Subject to the provisions of sections 94(2) and (3),
 - [a] no order of assessment under sections 82BB shall be made after the expiry of two years from the end of the assessment year.
 - [b] no order of assessment under section 107C after the expiry of 3 years from the end of the assessment year.
 - [c] no order of assessment other than [a] & [b] above shall be made after the expiry of six months from the end of the assessment year.
- (2) An assessment under section 93 may be made within two years from the end of the year in which notice under section 93(1) was issued;
- (3) Notwithstanding anything contained in section 94, limiting the time within which any action may be taken, or any order or assessment may be made, order or assessment, as the case may be, to be made on the assessee or any other person in consequence of, or to give effect to, any finding or direction contained in an order under section 120, 121A, 156, 159, 161 or 162 or, in the case of a firm, an assessment to be made on a partner of a firm in consequence of an assessment made on the firm, may be made within 30 days from the date on which the order was communicated and such revised order shall be communicated to the assessee within 30 days next following.

However, where an order of assessment has been set aside by any authority in that case the assessment shall be made within 60 days from the date on which the order was communicated to him.

EXPLANATION I: Where, by an order under sections 120, 121A, 156, 159, 161 or 162, any income is excluded from the total income of the assessee for an assessment year, and another assessment of such income for another assessment year shall, for the purposes of this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.

EXPLANATION II: Where, by an order under sections 120, 121A, 156, 159, 161 or 162, any income is excluded from the total income of one person and held to be the income of another person, an assessment of such income of such other person, shall, for the purposes of this section, be deemed to be one made in consequence of or to give effect to, any finding or direction contained in the said order.

- (4) Where the DCT fails to give effect to any finding or direction contained in an order referred to in section 94(3) within the period stipulated therein, such failure of the DCT shall be construed as misconduct.



Chapter 18

Assessment of individuals

Contents

Introduction

Examination context

Topic list

18.1	Definition of individuals
18.2	Scope of income of individual assessee
18.3	Non-assessable and tax credit income
18.4	Grossing up of income
18.5	Tax rate of individuals
18.6	Assessment procedure
18.7	Specimen form of computation of total income and tax liability

Worked example

Introduction

Learning objectives

- Illustrate the assessment of individuals.
- Identify different heads of income.
- Differentiate non-assessable and tax credit income.
- Define grossing up of income.
- State the procedure of assessment
- Prescribe a specimen format of computing total income and net tax liability.
- Define the time limitation for assessment.

Practical significance

Assessment of income and tax liability is very significant for every assessee. Assessing the income of individual assessee and tax liability thereof is important for individual assesses. This chapter recapitulates the taxable income, non-assessable income, tax credit income, grossing up of income, applicable tax rates and related issues required for completing the assessment of individuals. Application of double taxation relief, set-off and carry forward of losses, minimum tax on the basis of TDS as per 82C, rebate for income from a partnership firm are exemplified. Professional accountants are required to have sufficient expertise on all of these issues.

Stop and think

Did you realize how important is the assessment for individual? Can you do the assessment of individual assessee independently?

Working context

Assessment of tax is very important for every assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of total taxable income and tax liability thereof for individual assessee is very important in case of providing support for clients' tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of individuals.
- Identify taxable income across different heads.
- Computing investment allowance, eligible amount and investment tax rebate.
- Identify non-assessable income and its application in computing taxable income.
- Apply TDS under section 82C showing its impact on total income.
- Identify the procedure of assessment
- Compute net tax liability after due credit of TDS, investment tax rebate and others.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

18.0 ASSESSMENT OF INDIVIDUALS

Section overview

- ➔ Scope of income for individuals is different from firm or company.
- ➔ Applicable tax rates for individuals are different from company.
- ➔ Some income of individual assessee is non-assessable.
- ➔ On some investment/donation, the assessee enjoys investment tax rebate.
- ➔ For TDS, assessee will get full tax credit at the time of computing net tax liability.
- ➔ With certain terms and conditions, loss under one head can be set-off against income under another head
- ➔ If loss under one head cannot be set-off completely, it can be carried forward to succeeding 6 years to set-off against the income under the same head.

18.1 Definition of individual

The word 'individual' has special meaning in income tax law. To look at its reference in tax law, we should look at two definitions, i.e. assessee and person.

"Assessee", means a person by whom any tax or other sum of money is payable under ITO, 1984, and includes -

- (a) every person in respect of whom any proceeding under ITO, 1984 has been taken for the assessment of his income or the income of any other person in respect of which he is assessable, or of the amount of refund due to him or to such other person;
- (b) every person who is required to file a return under section 75, 89 or 91;
- (c) every person who desires to be assessed and submits his return of income under ITO, 1984; and
- (d) every person who is deemed to be an assessee, or an assessee in default, under any provision of ITO, 1984 [Section 2(7)].

"Person" includes an individual, a firm, and an AOP, a HUF, a trust, a fund, a local authority, a company, an entity and every other artificial juridical person [Section 2 (46)].

Thus, the word 'assessee' means a person that includes an individual who is liable to pay tax as per Income Tax Ordinance, 1984. This chapter represents the assessment of income of individuals and computation of tax liability of an individual assessee.

18.2 Scope of income of individual assessee

As per section 20 of IT Ordinance 1984, for the purpose of charging income tax and computation of total income, all incomes shall be classified and computed under the following heads of income, namely.

- (a) Salary.
- (b) Interest on securities.
- (c) Income from house property.
- (d) Agricultural income.
- (e) Income from business or profession.
- (f) Capital gain.
- (g) Income from other sources.

18.3 Non-assessable income and tax rebate on investment allowance:

Across the 7 heads as mentioned at section 20, some categories of income are declared as non-assessable. Thus, at the time of assessment, it is important to know the items of non-assessable income so that it can be excluded at the time of computing taxable income. Whereas investment tax rebate facility can be availed by the taxpayer on investment at allowable sectors. The list of non-assessable income and investment allowance is given in the following schedules that are subject to change from time to time through Finance Act:

Non-assessable Income	: Sixth Schedule, Part A
Investment allowance on which tax rebate is applicable	: Sixth Schedule, Part B

The economic rationality of these provisions is embedded in the equation:

$$Y = C + I$$

Where, Y represents income, C represents consumption and I represents investment.

To reduce the tax burden, some specific income from specific sources is declared non-assessable on which no tax is imposed. Again, to discourage consumption and motivate investment, some investments are allowed for claiming investment tax rebate.

18.4 Grossing up of income

Another important issue is the grossing up of income which is received by the assessee after TDS at specified rate. The equation used to gross up income is given below:

$$\text{Gross income} = \frac{\text{Net income} \times 100}{100 - \text{Rate of tax deducted at source}}$$

Thus, for grossing-up income, it is important to know the rate of TDS. Only income received after tax is required to gross-up. Grossed up income should be included in calculating taxable income, however, tax already deducted or paid will be claimed as credit at the time of computing net tax liability.

18.5 Tax rate of individuals

Individuals are taxed as per the 5 tier taxation system in Bangladesh. However, these rates are same for every individual including Bangladeshi non-residents, HUF, NGO, Partnership Firm, AOP, Trust, Fund, Entity and every other artificial juridical person. Current rates applicable to individuals on taxable income for the assessment year 2016-17 are:

Income tier		Rates
On the first	Tk. 2,50,000	Nil
On the next	Tk. 4,00,000	10%
On the next	Tk. 5,00,000	15%
On the next	Tk. 6,00,000	20%
On the next	Tk. 30,00,000	25%
On the balance		30%

Note:

- a) The non-assessable income limit will be as follows:

For women and elderly citizens being 65 years of age or more	Tk. 3,00,000
For disable persons	Tk. 4,00,000
For Gazetted war wounded freedom fighter	Tk. 4,25,000
For being father of disable children or	Tk. 3,00,000
For being mother of disable children	Tk. 3,50,000

- b) If the aggregate income of an individual assessee exceeds Tk. 47, 50,000 (Tk. 2, 50,000 + Tk. 400,000 + Tk. 500,000 + Tk. 600,000+30,00,000), he will be charged at maximum 30% on such income as it exceeds Tk. 47,50,000.

- c) However, the minimum tax would be Tk. 5,000 or Tk. 4,000 or Tk.3,000 depending on the location of the assessee.
- d) If the assessee is an owner of any small and cottage industry or engaged in such kind of activities in a NBR specified less developed / least developed area, he/she will be eligible to have a tax rebate on such income:

If production / turnover increases by more than 15% but less than 25% comparing to previous year	5% rebate on tax applicable on such income will be allowed
If production / turnover increases by more than 25% comparing to previous year	10% rebate on tax applicable on such income will be allowed

- e) Only **individual** assessee having net wealth exceeding Tk. **2.25 crore** as per statement of assets & liabilities is liable to pay **surcharge @10%** on income tax payable and in case net wealth exceeds Tk. 5 crore but does not exceed 10 crore then surcharge is to be paid @15%, if wealth exceeds Tk. 10 crore but does not exceed 15 crore then surcharge is to be paid @20%, and if it exceeds 15 crore but does not exceed 20 crore then the rate of surcharge will be 25% and if it exceeds Tk.20 crore then the rate of surcharge will be 30% for the assessment year 2017-18.
- f) However, the rate of tax would be straight 30% (at maximum rate) if the individual assessee is classified as non-resident foreigner (NRF).

18.6 Procedure of assessment

Step 1: Compute taxable income under different heads.

[Don't forget to exclude non-assessable income and grossing up of income at the time of computing taxable income in specified areas]

Step 2: Compute allowable investments made

[Don't forget to test actual investment so that it must not exceed the maximum limit. If it exceed maximum limit, allowable investment would be the lower one]

Step 3: Compute net tax liability

[Don't forget to consider tax credit due to TDS, refund adjustment, rebate, foreign tax credit and rebate on income from partnership firm]

18.7 Computation of total income and total tax liability

Sources of income and particulars	Amount	Amount	Amount
1.Salaries (section 21):			
Basic salary		***	
Dearness allowance		***	
Annuity		***	
Festival bonus / performance bonus		***	
Leave encashment / Compensation		***	
Employer's contribution to recognized provident fund		***	
Taxable portion of Interest on recognized provident fund	***		
Advance salary / outstanding salary			
Retirement allowance / gratuity / pension	***	***	
Less: exempted – pension full, gratuity up to Tk.2.5 crore		***	
Entertainment allowance	***		
Medical allowance	***		
less: exempted –up to 10% of basic or Tk.1,20,000 whichever is lower	***	***	
House-rent allowance	***	***	

Sources of income and particulars	Amount	Amount	Amount
Less: Tk. 3,00,000 (monthly @ 25,000) or 50% of basic salary whichever is lower	***		
Rent free accommodation (furnished or unfurnished) : the rental value or 25% of basic salary whichever is lower	***	***	
Accommodation at a concessional rate: the rental value or 25% of basic salary whichever is lower	---		
Less: rent paid by the employee	***	***	
Conveyance allowance	***	***	
Less: exempted – (maximum Tk. 30,000 per year)	***	---	
Car facility: 5% of basic salary or Tk.60,000 whichever is higher	---	***	
Car facility & conveyance allowance: both will be added,		***	
Servant's allowance		***	
Others benefit		***	***
2. Interest on security (section 22):			
(a) Interest from tax free government securities	***		
Less: exemption (full as per para-24)	---	***	
(b) Interest from government securities	***		
(Full amount will be added if TDS at upfront system)			
Less: Admissible expenses -			
Bank charge and commission	**		
Interest on borrowed fund	**	---	
(c) Interest from securities based on Islamic principles	***		
(To be grossed-up if TDS at the time of payment)			
Less: Admissible expenses -			
Bank charge and commission	**		
Interest on borrowed fund	**	---	
(d) Interest from Wage earner Development Bond	***		
Less: exemption (full as per para-24A)	---	***	
e) Interest from zero-coupon bond	***		
Less: exempted – (full as per para-40)	---	---	***
3. Income from house property (section 24 -25):			
Annual value:			
Rental value	***		
Add: TDS (If any)	***		
Add: Owner's expenses paid by the tenant	***		
Less: Tenant's expenses paid by the owner	(***)		
Actual rental value	***		
Reasonable rent	---		
Higher of actual rental value and reasonable rent		***	
Less: admissible expenses:			
1. Repair & maintenance expenses	***		

[Collection charge, sewerage bill, salary of guard, liftmen, caretaker etc.] [Admissible limit: Residential house: 25% & Commercial house: 30%] 2. Land development tax 3. Insurance Premium 4. Interest payable on house building Loan 5. Annual tax [Municipal or local authority tax] 6. Vacancy allowance	*** *** *** *** *** ***	*** *** *** *** *** ***	
		*** —	***
4. Agricultural income (section 26 -27):			
Sale of crops Income from any land or building used for agricultural purposes Income from granting a right [Borga] Income from tea garden or rubber garden [60%] Revenue profit by sale of discarded or demolished agricultural machineries Other income relating to agriculture	*** *** *** *** *** ***	*** *** *** *** *** ***	
Less: Admissible expenses –		***	
1. Land development tax	***		
2. Any taxes [local taxes, etc.]	***		
3. production costs	***		
❖ Cost for cultivating the land or raising live-stock			
❖ Ordinary processing costs to make crop marketable			
❖ Transportation cost of crops or livestock to market			
❖ Maintenance cost of agricultural equipment & up keeping of cattle for cultivation			
<u>If proper books of accounts does not maintained an expenditure equivalent to 60% of sales proceeds is allowed as admissible expense</u>			
4. Insurance premium	***		
5. Repair and maintenance of irrigation plant	***		
6. Depreciation	***		
7. Interest on mortgage loan	***		
8. Interest on borrowed capital	***		
9. loss due to discard/demolish of agricultural machineries	***		
10. Other revenue expenses	***		
	*** —	*** —	***
5. Income from business or profession(section 28 -30):			
Net profit as per Profit and Loss Account		***	
Add: Inadmissible Expenses as per section 29 and 30		***	
Add: Income under the head of business and profession that are not included earlier		***	
Less: Expenses that are allowed (not debited in P/L a/c)		(***) ***	
Total Income		***	
Less: Income that are not from business or profession (already credited in P/L a/c.)		*** —	***

Source of income and particulars	Amount	Amount	Amount
6. Share of profit in a partnership firm			***
7. Income of spouse or dependent minor child			***
8. Capital gain(section 31 -32):			
Sale proceeds of capital assets, or	***		
Fair market value at the time of transfer, <i>whichever is higher</i>	***	****	
Less – Allowable deductions			
(a) Expenditure incurred to transfer the capital asset(s)	***		
(b) Cost of acquisition	***		
(c) Capital expenditure incurred for improvements of the asset(s)	***	****	
Capital gain		*****	
Less: Tax-exempted capital gain			***
9. Income from other sources(section 33 -34):			
1. Income from mutual / unit fund [Dividend received × 100/90] Less: Exempted – up to Tk. 25,000	***		
2. Cash Dividend from listed Co. [Dividend received × 100/90] Less: Exempted – up to Tk. 25,000	(***)	***	
3. Interest from bank deposit / profit from Islami Bank [Interest received × 100/90]		***	
4. Interest on Savings Certificate On 5 year / 3 year Bangladesh Savings Certificate [Interest received × 100/95] On Pensioner / Paribar Sanchayapatra [Interest received × 100/95]	(***)	***	
5. Interest on Post Office Savings Bank account [Interest received × 100/90]	(***)	***	
6. Any commission/fee received from parties other than employer		***	
7. Royalty income from books		***	
8. Income from prize bond / lottery / quiz competition / crossword [Amount received × 100/80]		***	
9. Commission / fee as Director of any company		***	
10. Non-agricultural income like sale of forest trees, sale of fruits, sale of honey, sale of fish of pond (other than firm) etc.		***	
11. Income from invigilation & exam script evaluation	***		
12. Income from writing articles / columns in newspapers	(***)	-	
13. Income from participating in radio / TV/ cultural /training programs		***	
14. Income from lease of non-agricultural land		***	
15. Income from tuition		***	
16. Income from underwriting commission for sale of shares and securities.		***	
17. Income from patent / license		***	
18. Income from rent of boat / mooring terminal		***	
19. Income from letting out household appliances like furniture, machineries etc.		***	
20. Unexplained investments deemed to be income u/s 19		***	
21. Any other income not classified under any head Less- Allowable deductions u/s 34: Interest on loan taken to purchase share Any other related revenue expenditure		***	

Sources of income and particulars	Amount	Amount	Amount

10. Foreign income(if not brought through banking channel)		***	***
Total income (taxable)			***

Calculation of tax liability:			
	Tk.	Rates	Amount (Tk.)
On first	2,50,000	0%	-
On next	4,00,000	10%	*****
On next	5,00,000	15%	*****
On next	6,00,000	20%	*****
On next	30,00,000	25%	*****
On remaining balance	*****	30%	*****
Total	*****		*****
Less: Investment tax rebate @ 15%,12% and 10%			*****
Less: Tax rebate on income from partnership firm			*****
Less: Foreign tax credit			*****
Less: Tax deducted at source/Advance tax			*****
Less: Tax refund adjustment			*****
Net tax liability			*****

Worked example

Example 1

Mr. Jamshed Hasan is an executive of a private firm. He furnished the following information for the income year ended 2016-18. Compute his total income and tax liability for the assessment year 2018-19.

Income from salaries:

- Basic salary Tk. 33,000 per month;
- Festival bonus equivalent to two months basic salary;
- House rent allowance Tk. 15,000 per month;
- Entertainment allowance @ 5% of basic salary;
- Medical allowance Tk. 2,000 per month (actual annual expense Tk. 18,000);
- Conveyance allowance Tk. 1,500 per month;
- Contribution to RPF both by employee and employer @ 10% of basic salary

Agricultural income:

- (i) Sale of crops Tk. 2,70,000;
- (ii) Income from sale of fish of pond Tk. 45,000 [not fish farming]

Income from business Tk.32,000

Income from other sources:

- (i) Interest from fixed deposit Tk. 27,000 [net of tax];
- (ii) Interest from savings deposit Tk. 18,000 [net of tax];
- (iii) Interest received on post office savings bank Tk. 9,000 [net of tax]
- (iv) Income from lease of non-agricultural land Tk. 35,000

Actual investment made by Mr. Jamshed Hasan during the year is given below.

- (i) Life Insurance Premium paid Tk. 20,000; Policy value Tk. 2,00,000
- (ii) Donation to local club Tk. 2,000;
- (iii) Gift to wife Tk. 20,000;
- (iv) Donation to a local mosque Tk. 5,000;
- (v) Investment in primary shares of listed companies Tk. 60,000;
- (vi) Purchase of Savings Certificate Tk. 30,000;
- (vii) Donation to a charitable Hospital Tk. 10,000;
- (viii) Purchase of furniture Tk. 15,000;
- (ix) Donation to Apollo Hospital Tk. 30,000;
- (x) Donation to Govt. Zakat Fund Tk. 5,000.

Mr. Jamshed Hasan has Tk. 8,500 refund adjustment from last year and a carry forward of loss from agriculture of Tk. 60,000 for last three years.

Solution 1:

Mr. Jamshed Hasan
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Sources of Income	Amount	Amount	Amount
1. Salaries (section: 21):			
Basic salary (33,000 X 12)		3,96,000	
Festival bonus (33,000 X 2)		66,000	
House rent allowance (15,000 X 12)	1,80,000		
Less: exempted -			
50% of basic salary	1,98,000		
Or, Tk. 25,000 per month	3,00,000		
Whichever is lower	1,80,000		
Entertainment allowance @ 5%		19,800	
Medical allowance (2,000 X 12)	24,000		
Less: exempted up to 10% of basic=Tk.39,600 or Tk.1,20,000	24,000		
or actual allowance Tk.24,000 whichever is lower			
Conveyance allowance (1,500 X 12)	18,000		
Less: exempted (maximum Tk. 30,000)	18,000		
Employer's contribution to RPF		39,600	
			5,21,400

2. Agricultural income (section: 26 & 27): Sale of crops Less: Admissible expenses – Production cost (2,70,000 X 60%) assuming no books of accounts maintained Less: carry forward of loss from last year	2,70,000	
	1,62,000	
	1,08,000	
	60,000	48,000
3. Income from business or profession (section:28–30) Business Income		32,000
4. Income from other sources (section: 33 & 34): Income from sale of fish of pond Interest from fixed deposit (27,000 X 100/90) Interest from savings account (18,000 X 100/90) Interest on post office savings bank (9,000 X 100/90) Lease rental of non-agricultural land	45,000 30,000 20,000 10,000 41,000	
		1,46,000
Total income		<u>7,47,400</u>

Calculation of allowable investment	
	Amount
Life insurance premium (maximum up to 10% of policy value)	Tk. 20,000
Investment in primary share of listed companies	60,000
Contribution to RPF (Tk. 39,600 × 2)	79,200
Purchase of savings certificate	30,000
Donation to:	
Charitable hospital (assuming govt. approved)	10,000
Govt. Zakat fund	5,000
Actual investment	2,04,200
Maximum limit:	
25% of total income (7,47,400 X 25%) [note-2]	1,86,850
or,	1,50,00,000
Whichever is lower	1,86,850
Thus, the amount of allowable investment is	1,86,850

Calculation of tax liability:

	Rates	Amount
On first Tk. 2,50,000	0%	-
On next Tk. 4,00,000	10%	Tk. 40,000
On next Tk. 97,400	15%	14,610
Total		54,610
Less: Investment tax rebate (1,86,850 X 15%)		28,028
		26,582
Less: Tax deducted at source		6,000
		20,582
Less: Adjustment of refund		8,500
Tax liability		<u>12,082</u>

Notes:

1. Actual allowable investment by Mr. Jamshed Hasan for the year is Tk. 2,04,200/ which exceeds the maximum limit of allowable investment. Maximum limit here is 25% of (7,47,400 X 25%) i.e., Tk. 1,86,850 or Tk. 1,50,00,000 whichever is lower, i.e., Tk. 1,86,850 and rebate is computed @15% on the basis of this eligible amount.
2. In case of computing investment tax rebate @ 25% employer's contribution to RPF is not deductible from total income with effect from the assessment year 2016-17 due to change at section 44(2)(b) of ITO, 1984 through Finance Act, 2016.
3. Tax deducted at source includes Tk. 5,000 on interest from bank deposit, and Tk. 1,000 on post office savings bank.

Example 2

Mrs. Jarin Huq is the general manager of a private company. Her sources of income for the year ended 30th June, 2018 were as follows:

Salaries:

Basic salary per month	Tk. 45,000
Medical allowance per month (actual exp. Tk. 19,000)	2,000
House rent allowance per month	30,000
Conveyance allowance per month	3,000
Employer's Contribution to RPF	10% of Basic

Interest on securities:

Interest received from tax free government securities	Tk. 25,000
Interest received from government securities (wherefrom tax paid on upfront system 3 years before)	40,000

Income from house property:

Annual rent received	Tk. 2,80,000
Municipal value	3,00,000
Expenses related to the house for the year:	
Repair and Maintenance	Tk. 1,00,000
Municipal tax	3,000

Agricultural Income :

Sale of crops	Tk. 3,00,000
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During the year, Mrs. Huq incurred the following investment and expenses:

Life insurance premium	Tk. 48,000
Donation to local mosque	40,000
Purchase of share from IPO of listed companies	44,000

As per the list of assets and liabilities as at 30/6/2016, Mrs. Huq's net asset value Tk. 6 crore. From the above particulars of Mrs. Huq compute total income and tax liability for the assessment year 2018-19.

Solution 2:

Mrs. Jarin Hug
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Sources of Income	Amount	Amount	Amount
1. Salaries (section: 21):			
Basic salary (45,000 X 12)		5,40,000	
Medical allowance (2,000 X 12)	24,000		
Less: exempted 10% of basic or Tk.1,20,000 lower one	24,000	nil	
House rent allowance:			
30,000 X 12	3,60,000		
Less: exempted -			
50% of basic salary	2,70,000		
Or, Tk. 25,000 per month	<u>3,00,000</u>		
Whichever is lower	2,70,000		
Conveyance allowance (3,000 X 12)	36,000	90,000	
Less: exempted (maximum Tk. 30,000 per year)	30,000		
Employer's contribution to RPF		6,000	
		54,000	6,90,000
2. Interest on securities (section: 22 & 23):			
Interest from tax free government securities	25,000		
Less: exempted full(as per 6 th schedule part-A para-24)	25,000	nil	
Interest from government securities (assuming she took credit of tax paid at upfront system during that year)			40,000
3. Income from house property (section: 24 & 25):			
Actual rental value	2,80,000		
Municipal value/reasonable rent	3,00,000		
Annual value (whichever is higher)		3,00,000	
Less: Admissible expenses –			
Repair and maintenance (3,00,000 × 25%)	75,000		
Municipal tax	3,000		
		78,000	
			2,22,000
4. Agricultural income (section: 26 & 27):			
Sale of crops		3,00,000	
Less: Admissible expenses –			
Production cost (3,00,000 × 60%) being no books of accounts are maintained		1,80,000	1,20,000
Total income			<u>10,72,000</u>

Calculation of allowable investment	
	Amount
Life insurance premium	Tk. 48,000
Contribution to RPF[both]	1,08,000
Share purchase from IPO of listed companies	44,000
Actual investment	2,00,000
Maximum limit:	
25% of total income (10,72,000 x 25%)	2,68,000
Or,	1,50,00,000
whichever is lower	2,00,000
Thus, the allowable investment allowance is the actual one	2,00,000

Calculation of tax liability:		
	Rates	Amount
On first Tk. 3,00,000	0%	-
On next Tk. 4,00,000	10%	Tk. 30,000
On next Tk. 3,72,000	15%	55,800
Total 10,72,000		85,800
Less: Investment tax rebate (200,000 X 15%)		30,000
		55,800
Add: Surcharge (55,800 X 15%)		8,370
Tax liability		47,430

Notes:

1. Medical allowance is exempted up to 10% of basic salary or Tk.1,20,000 whichever is lower.
2. It is assumed that the house property has been let out for residential purpose and so the repair and maintenance expense is considered as 25% of annual value. **Here there is no scoop of determining deemed house property income u/s 19(30) as the expenditure claimed is more than the statutory limit of 25% of annual value.**
3. Production cost is considered as 60% of the selling price of the crops in absence of any books of accounts.
4. As actual investment does not exceed maximum limit of investment, here allowable investment for tax rebate is the amount of actual investment.
5. In case of computing investment tax rebate @ 25% employer's contribution to RPF is not deductible from total income with effect from the assessment year 2016-17 due to change at section 44(2)(b) of ITO,1984 through Finance Act,2016.

Worked example 3

Mr. Anu Ahmed has the following income for the income year ended on 30th June, 2018:

Income from salaries

Mr. Anu Ahmed received basic salary of Tk. 18,500 in the month of April, 2018 following the scale of his salary 17,000 – 1,500 – 20,000. The date of annual increment of his salary is 1st April. Besides basic salary he received dearness allowance @ 15% of his basic salary; Entertainment allowance and Medical allowance @ 20% and @10% of basic salary respectively; Annual bonus and fees Tk. 36,000; house rent allowance Tk. 11,000 per month; conveyance allowance Tk. 1,250 per month. He contributes 10% of basic salary to a recognized provident fund (RPF) and his employer also contributes the same in the fund. During the year he received Tk. 15,000 as interest on provident fund and the rate of interest was 12.5%.

Income from interest on securities

Mr. Ahmed received interest on Govt. securities Tk.1,00,000. Nothing was deducted at source this year as because Tk.5,000 was deducted at upfront system @ 5% in the year of purchase

Income from business and profession

Due to the economic problem and huge competition, his business results a loss of Tk. 80,000 this year which he likes to set-off against income from the sources mentioned above.

Capital gain

He has sold a machine at fair market price of taka 150,000 before the expiry of 5 years which was purchased at a price of taka 80,000 for the purpose of his business. Another 30,000 taka was spent to improve the machine. At the time of sale, the machine had accumulated depreciation amounting to taka 60,000.

Mr. Ahmed made and incurred the following investments and expenses during the year:

1. Life insurance premium Tk. 6,000; policy value Tk. 70,000.
2. Purchase of books Tk. 6,000 and purchase of scientific instruments Tk. 10,000.
3. Purchase of primary shares of Listed Company Tk. 20,000.
4. Donation to religious institutions Tk. 8,000; donation to Govt. Zakat Fund Tk. 7,500; donation to president's relief fund Tk. 28,000; donation to a local club Tk. 9,000; donation to a blind school Tk. 15,000;
5. Purchase of a piece of land worth Tk. 70,000 in the name of his wife and a sum of Tk. 5,000 was spent for its registration.
6. Spent a sum of Tk. 15,000 as educational expenses of his children.
7. Purchase of ICB unit certificate Tk. 20,000.
8. Purchase of gold Tk. 20,000.
9. Contribution to group insurance scheme Tk. 2,000.

Ascertain his total income and tax to be paid for the assessment year of 2018-19

Solution 3:

Mr. Anu Ahmed

Income year: 2016-17 [Assessment year: 2017-18]

Computation of total income

Heads of Income	Amount	Amount	Amount
1. Income from salaries (section: 21):			
Basic salary (Note – 1)		2,08,500	
Dearness allowance @ 15%		31,275	
Entertainment allowance @ 20%		41,700	
Medical allowance @ 10%	20,850		
Less: exempted (fully as it is within limit)	20,850		
Annual bonus and fees		36,000	
House rent allowance: (11,000 X 12)	1,32,000		
Less: exempted - lower of:			
50% of basic salary	1,04,250		
Or, Tk. 25,000 per month	3,00,000		
	1,04,250		
		27,750	
Conveyance allowance (1,250 X 12)	15,000		
Less: exempted (maximum Tk. 30,000)	15,000		
Employer's contribution to RPF		20,850	
Interest from RPF	15,000		
Less: exempted –up to:			
Interest @ 14.50% [(15,000/12.5)*14.5] = 17,400			

Or, $\frac{1}{3}$ of basic & dearness allowance $[2,08,500 + 31,275 = 2,39,775/3] = 79,925$ Whichever is lower	15,000		
			3,66,075
2. Income from interest on securities (section: 22):			1,00,000
4. Income from business or profession (section:28) Loss from business Revenue gain from sale of machine (Cost Tk.1,10,000- WDV Tk.50,000)		(80,000) 60,000	
5. Capital gain(section: 31) Sale proceeds or fair market value whichever is higher Less: Cost of acquisition Cost of improvement Capital gain	80,000 <u>30,000</u>	150,000 110,000	(20,000) 40,000
Total income			<u>4,86,075</u>

Calculation of allowable investment allowance as per 6th schedule (part-B):

	Amount	Amount
1. Life Insurance premium Maximum: 10% of Tk. 70,000	Tk. 6,000 7,000	Tk.6,000
2. Purchase of primary shares of listed Company		20,000
3. Donation to Govt. Zakat fund		7,500
4. Purchase of ICB unit certificate		20,000
5. Contribution to group insurance		2,000
6. Contribution to RPF (20,850 X 2)		41,700
Total allowable investment		97,200
Maximum limit of allowable investment: 25% of total income = $(4,86,075 \times 25\%)$ or Whichever is lower	1,21,519 1,50,00,000	97,200
Thus allowable investment for tax rebate		<u>97,200</u>

Calculation of tax liability:

	Rates	Amount
On first Tk. 2,50,000	0%	-
On next Tk. 2,36,075	10%	Tk. 23,608
Total 4,86,075		23,608
Less: Investment tax rebate $(97,200 \times 15\%)$		14,580
Tax liability		<u>9,028</u>

Notes:

- After increment on April 1, 2018 Mr. Ahmed receives basic salary of Tk. 18,500 whereas before increment he received basic salary of Tk. 17,000. So his basic salary for the income year is $(17,000 \times 9 + 18,500 \times 3) = \text{Tk. } 2,08,500$.
- Medical allowance is exempted up to 10% of basic salary or Tk.1,20,000 whichever is lower.
- Tax credit is not given on interest on securities as there is no TDS during the year. Assuming he already enjoyed tax credit in the year of purchase at upfront system.

4. As the capital asset is sold within 5 years of acquisition, regular tax rate has been applied as per 2nd schedule.
5. It is assumed that the revenue gain on sale of machinery is not included in income from business and profession. Thus the business loss of Tk. 80,000 is set off against other income under the same head first. And the balance is set off against income from either salary or interest on securities as per section 37.

Worked example 4

Mr. Joyanal Abedin works as an officer in a Multinational Company, headquartered in USA. His sources of income for the year ended on 30th June, 2018 were as follows:

a. Income from salaries:

1. Basic salary Tk. 15,000 per month.
2. Dearness allowance 10% of the basic salary
3. Two bonuses equivalent to two months basic salary.
4. Medical allowance Tk. 1,000 per month (actual expense Tk. 10,000)
5. Entertainment allowance Tk. 200 per month
6. He has been provided with a free car both for official and personal use.
7. He has also been provided with a rent free quarter municipal value of which is Tk. 80,000.
8. Travelling allowance as a part of his contract Tk. 1,00,000; from where he saved Tk. 10,000.
9. He contributes 10% of his basic salary to a Recognized Provident Fund. His employer also contributed the same
10. During the year, he received interest of Tk. 1,800 @ 12% on RPF.
11. He has taken Tk.21,500 as advance in the month of June to meet up some of his financial difficulties.

b. Interest on securities:

Mr. Abedin received interest on Govt. securities Tk.1,00,000. Nothing was deducted at source this year as because Tk.5,000 was deducted at upfront system in the year of purchase 3 years back. Bank also charged Tk. 400 to collect the interest.

c. Income from house property:

He owns a two-storied house at Dhanmondi. He stays in one floor with his family and another floor is let out for residential purpose @ Tk. 9,000 per month. The municipal value of the house is Tk. 2,00,000 per annum. During the year he spent the following expenses:

Repair expense	Tk. 2,000
Fire Insurance premium	Tk. 4,000
Land development tax	Tk. 1,500
Sewerage and utilities expense	Tk. 1,000
Payment of HB Loan installment (including interest of Tk. 500)	Tk. 5,000
During the year, the house has remained vacant for two months.	

d. Agricultural income:

Sale of crops	Tk. 5,000
Income from barga	Tk. 2,000

e. Share of profit from partnership firm

Tk. 10,000

f. Income of spouse and minor children dependent on him

Tk. 40,000

g. He won a lottery of Tk. 3,00,000 (tax deducted @ 20% - Tk. 60,000 from it)

- h. During the year Mr. Abedin visited South Korea as a consultant and generated income of Tk. 5,00,000 and he paid income tax @ 25% in South Korea. He brought 2,50,000 to Bangladesh through bank. From another visit to Russia he generated income of Tk. 3,00,000 and paid income tax there @ 20%.

i. **Income from business**

Profit from sole-proprietorship business Tk. 4,000; last year's loss carried forwarded Tk. 1,000.

j. **Income from other sources:**

1. Interest income from FDR	Tk. 4,500
2. Profit from Islami bank	Tk. 900
3. Dividend from ICB Mutual Fund	Tk. 31,500
4. Cash dividend from a listed company shares	Tk. 1,800
4. Sale of forest timber	Tk. 2,000

Investment claimed by Mr. Abedin:

1. Payment of life insurance premium Tk. 8,000 (Policy value Tk. 100,000)
2. Purchase of a listed company's primary share Tk. 5,000
3. Purchase of books and magazines Tk. 1,000
4. Purchase of a share of co-operative society Tk. 2,000
5. Contribution to President's Relief Fund Tk. 3,000
6. Contribution to Govt. Zakat Fund Tk. 2,500
7. Purchase of Furniture Tk. 15,000

Based on the above information, compute Mr. Abedin's total income and tax liability for the assessment year 2018-19.

Solution 4:

Mr. Joynal Abedin
Income year: 2017-18
Assessment year: 2018-19
Computation of total income

Heads of income	Amount	Amount	Amount
1. Income from salary (section: 21):			
Basic salary (15,000 X 12)		1,80,000	
Dearness allowance (1,80,000 × 10%)		18,000	
Bonus (15,000 × 2)		30,000	
Medical allowance (1,000 × 12)	12,000		
Less: Exempted –10% of basic or Tk.1,20,000 lower one	12,000	nil	
Entertainment allowance (200 X 12)		2,400	
Car facility (1,80,000 × 5%) or Tk.60,000 higher one		60,000	
Rent free accommodation: lower of:			
25% of basic salary	45,000		
Or, rental value whichever is lower	80,000	45,000	
Travelling allowance	1,00,000		
Less: Exempted – up to actual expense	90,000		
Advance salary		10,000	
Employer's contribution to RPF (10% of Tk. 180,000)		21,500	
		18,000	
Interest on RPF	1,800		

Less: exempted – up to: 1/3rd of basic and DA [1,80,000+18,000=1,98,000/3] = <u>66,000</u> Or, Interest @ 14.50% [(1,800/12)*14.5] = 2,175 Whichever is lower	1,800		
2. Income from interest on securities (Section – 22): Interest on government securities Less: collection charge charged by the bank	1,00,000 (400)		3,84,900
3. Income from house property (section: 24 & 25): Actual rental value (9,000 × 12) Municipal value (2,00,000 / 2) Annual value (whichever is higher) Less: Admissible expenses – Repair and maintenance (25% × 1,08,000) Fire Insurance premium (4,000 / 2) Land development tax (1,500 / 2) Interest on loan (500 / 2) Vacancy allowance (9,000× 2)	1,08,000 1,00,000 27,000 2,000 750 250 18,000	99,600 1,08,000 48,000	99,600 60,000
4. Agricultural income (section: 26 & 27): Sale of crops Income from barga Less: Production cost (5,000 × 60%)	5,000 2,000	7,000 3,000	4,000
5. Income from business (section: 28): Profit from sole-proprietorship business Less: Set-off of previous year's loss		4,000 1,000	3,000 10,000
6. Share of profit in a partnership firm (assuming untaxed being the figure is very low)			40,000
7. Income of spouse and minor children dependent on him			
8. Income from other sources (section: 33 & 34): Interest on fixed deposit (4,500 × 100/90) Profit from Islami Bank (900 × 100/90) Dividend from ICB Mutual Fund (31,500 × 100/90) Less: Exempted – up to Tk. 25,000 Cash dividend of listed Co. (1,800 × 100/90) Less: exempted up to Tk.25,000 Sale of forest timber Prize Bond Lottery(TDS is minimum tax u/s 82C)	35,000 25,000 2,000 2,000	5,000 1,000 10,000 nil 2,000 3,00,000	3,18,000
9. Foreign income: [a] Income from South Korea (As there is DTAA between Korea and Bangladesh foreign tax credit will be allowed as per sec 144(4): Less: Brought to Bangladesh through official channel(exempted as per 6 th schedule part-A para-48) [b] Income from Russia:(As there is no DTAA between Bangladesh and Russia, so no foreign tax credit will be allowed as per section 145 as NBR not yet prescribed any rules in this behalf)	5,00,000 2,50,000	2,50,000 3,00,000	5,50,000
Total income			<u>14,69,500</u>

Calculation of eligible amount of investment	
	Amount
Life insurance premium	Tk. 8,000
Share of listed companies	5,000
Contribution to Govt. zakat fund	2,500
Contribution to RPF (18,000 × 2)	36,000
Actual investment	51,500
Maximum limit of allowable investment: 25% (total income – income u/s 82C) = (14,69,500 – 3,00,000) X 25%	2,92,375
Or, Whichever is lower	1,50,00,000
	51,500
Thus eligible amount of investment for tax rebate would be	<u>51,500</u>

Calculation of tax liability:		
	Rates	Amount
On first Tk. 2,50,000	0%	-
On next Tk. 4,00,000	10%	Tk. 40,000
On next Tk. 5,00,000	15%	75,000
On next Tk. 3,19,500	20%	63,900
On lottery income Tk. 3,00,000	20%	60,000
Total 14,69,500		2,38,900
Less: Investment tax rebate (51,500 × 15%)		(7,725)
		2,31,175
No Tax credit for profit on partnership firm (assuming this small figure is untaxed)		nil
		2,31,175
Less: Double taxation relief[foreign tax credit as per sec 144(4)] [note-5]		39,325
		1,91,850
Less: Tax deducted at source [note-1]		64,300
Net tax liability		<u>1,27,550</u>

Notes:

1. TDS includes Tk. 500 on interest on fixed deposit, Tk. 100 on profit from Islami Bank, Tk. 3,500 on dividend from ICB mutual fund, Tk. 200 on dividend of listed company and Tk. 60,000 on winning of lottery.
2. Both contributions to RPF are investment allowance.
3. Purchase of books, Contribution to President's Relief Fund, shares of co-operative society and furniture is not considered as investment allowance as these are not items of 6th schedule(part-B)
4. Average rate of tax = (2,31,175/14,69,500) i.e. 15.73%
5. Double taxation relief:

Tax relief –

[a] On income from **South Korea** (as per DTAA) 25% of 2,50,000 = Tk. 62,500
Maximum relief for DTAA country is at an average rate of the country –
(2,50,000 X 15.73%) = Tk.39,325

[b] On income from **Russia** : (As there is no DTAA between Bangladesh and Russia, so no foreign tax credit will be allowed as per section 145 as NBR not yet prescribed any rules in this behalf)

Question No. 5:

The following are the particulars of income of Mr. Fazal for the year ended 30th June, 2018.

- a) Salary Tk.12,000/- per month (basic)
- b) Dearness Allowance -40% of basic pay but maximum of Tk.4,000 per month
- c) Entertainment Allowance Tk.400 per month.
- d) Bonus-equivalent to basic salary of two months.
- e) Income from Commercial Securities Tk.6,098/-.
- f) Honorarium as part time advisor Tk.20,000/-
- g) Income from Partnership Business Tk.50,000/-(taxed).
- h) Income from Agricultural Land (sale of crops) Tk.10,000/-
- i) Royalty from books Tk.7,000.
- j) Received birth day presentation Tk.5,000.
- k) Interest on pensioner savings certificate Tk.10,000.

Mr. Fazal was provided with a free-furnished quarter. He also owns a house which is let out at Tk.10,000 per month. The reasonable rent of the house is Tk.1,00,000. He spent Tk.7,500/- for repair and Tk.30,000 for alternation. He also paid Tk.4,000 for Municipal Tax, Tk.2,000 for fire insurance premium, Tk.3,000 for collection charges.

Other Particulars of Mr. Fazal are as follows:

- i. He contributed 10% of his basic salary to a recognized provident fund to which his employer contributed equal amount.
- ii. He insured his own life for Tk.75,000 and for the life of his wife for Tk.50,000. He paid insurance premiums on the above policies Tk.6,000 and Tk.4,000 respectively.
- iii. Purchased Sanchay Patra for Tk.20,000.
- iv. He spent Tk.8,000 on education for two college going children.

Required to calculate:

- i) The total taxable income
- ii) Investment tax rebate for the year ended 30th June 2018.
- iii) Tax to be paid.

Answer to question no.5:

Computation of Total income of Mr. Fazal
Income Year: 2017-18 Assessment Year: 2018-19

Particulars	Tk.	Tk.	Tk.	Tk.
1. Income from Salary: Sec 21				
a) Basic Salary: Tk.12,000 Monthly	12,000X12		1,44,000	
i) Dearness allowance: 40% of Basic pay Maximum: 4,000x12=	57,600 48,000	48,000		
ii) Entertainment Allowance: 400X12		4,800		
iii) Bonus (2 month's Basic Salary)	12,000X2	24,000		
iv) Free Furnished Quarter: 25% of Basic pay		36,000		
v) Employer's contribution to RPF: 10% of B. S.		14,400	1,27,200	2,71,200
2. Interest on Securities: Sec.22				
Income from Commercial Securities:				6,098
3. Income from House property: Sec.24				
Wholly let out house:				
Annual Rental Value: 10,000X12	1,20,000			

Or, reasonable rent (Higher one is A.V.)	1,00,000	1,20,000		
Less admissible deductions u/s 25:	30,000			
i) Repair 1/4th of A.V.(including collection charge)				
ii) Municipal tax	4,000			
iii) Insurance Premium	2,000	36,000	84,000	
Deemed income from House Property u/s 19(30)				
Repairs allowed as per section 25				
Less: Repairs claimed (Tk.7,500+Tk.3,000)=	30,000			
Unspent amount will be treated as HP income u/s 19(30)	10,500		19,500	1,03,500
4. Income from Agriculture: Sec. 26				
Sale of crops	10,000			
Less Cost of production @ 60%	6,000			4,000
5. Income from Business: Sec.28				
Income from Partnership Business(taxed income)				50,000
6. Income from Other Sources: Sec. 33				
a) Honorarium as advisor		20,000		
b) Royalty from books		7,000		27,000
c) Birth Day Gift (Non-taxable as gift is not income)				
	5,000			
Total Income				4,61,798

Investment Tax Rebate: Sec. 44(2) (b); 44(3)

Particulars	Total Investment Tk.	Admissible Investment Tk.	Tax rebate Tk.
a) Actual Investment:			
i. Contribution to RPF: 14,400 X 2 (Employer and Employee both)	28,800		
ii. Savings certificate	20,000		
iii. Life Insurance Premium			
Self: 6,000			
or, 10% of Policy amount 7,500 (Lower)	6,000		
Wife: 4,000			
Or, 10% of Policy amount 5,000 (Lower)	4,000		
	58,800		
b) Max Limit of Investment: 25% of T.I. =4,61,798X 25% = 1,15,450 or Tk. 1,50,00,000 or Actual investment Tk.58,800 (Whichever is lower)		58,800	
Tax rebate: 15% on eligible amount of Tk. 58,800			8,820

Tax calculation:

Total Income	Tk. 4,61,798
Tax on 1 st Tk. 2, 50,000=	Nil
Tax on remaining Tk. 2, 11,798@ 10%	21,180
	21,180
Less: Investment tax rebate	8,820
	12,360
Less: Rebate on income from partnership firm at average rate as per 6 th schedule (part-b)para-16 (50,000X12,360/4,61,798)	1,338
Net tax payable	Tk. 11,022

Note:

- 1) Income from Commercial Securities needs not to be grossed-up as TDS was at upfront system during the year of purchase.
- 2) Rebate would be calculated at the average rate of tax out of the "Income from Partnership Business" (taxed) to arrive at the Net tax calculation as per 6th schedule (part-B) para-16.
- 3) Royalty income from books is taxable u/s 33 as per sec.36 of ITO, 1984.
- 4) Education expense for Children is not an item of investment allowance.
- 5) Interest on pensioner savings certificate is tax free up to investment of Tk. 5 lakh. As the interest income figure is only Tk.10,000, so I assume that investment was within that limit.

Question No.6

Mr. A. Quader works as Manager Finance in a reputed financing company. The following are the details of income of Mr. A. Quader for the year ended June 30, 2018.

(a) Salary Income:

Basic Salary - Tk. 35,000 p.m., Bonus – 2 months basic salary, House rent allowance – 40% of basic salary, Medical allowance – Tk. 2,500 p.m., Conveyance allowance – Tk. 3,000 p.m., Concessional passage within Bangladesh – Tk. 1,30,000, Subscription to RPF – 10% (Employer's contribution is also the same), Interest accrued Tk. 85,000 on RPF balance calculated @ 16% p.a.

(b) Income from House Property:

Mr. Quader has one residential house-one half of which is let out at a monthly rent of Tk. 12,000 and the other half is self-occupied. Following expenditures were incurred by Mr. Quader: Municipal tax Tk.22,000; Repairs and maintenance Tk.55,000; Insurance premium Tk.16,000; Salary of caretaker Tk.36,000

(c) Capital Gains:

- i. Profit on sale of shares of MNC Ltd (A Private Ltd. Co.) Tk. 40,50,000
- ii. Sale of Shop (Deed Value Tk. 1,82,500), Original cost Tk. 30,750 and tax deducted at source at the time of registration Tk. 5,650 to be assessed u/s. 82C.
- iii. Profit on sale of shares of ERZ Ltd. Tk. 23,30,500 (A Publicly listed Co.)

(d) Income from Land:

Sale of paddy from land given on "Adhi" system – Tk.1,12,000. Sale proceeds from trees of spontaneous growth in Mr. Quader's land Tk. 12,000

(e) Income from Business:

Share of profit from a partnership firm Tk. 67,000
Business Income Tk. 70,000 (after allowing current year's depreciation Tk. 20,000)
The following sums have been brought forward from the preceding year:
(1) Unabsorbed depreciation Tk. 80,000
(2) Business loss Tk. 50,000

(f) Interest income (Net @ 10% tax deduction at source):

- (1) From Leasing Company Tk. 8,33,500
- (2) On Bank Fixed Deposit Tk. 1,25,250
- (3) On Bank Savings Account Tk. 55,700

(g) Income from other Source:

- (1) Dividend (gross) Tk. 12,350
- (2) Income from shop rent Tk. 2,500 per month

During the year Mr. Quader made the following investments –

- (1) Life insurance premium Tk. 65,000 (Policy Value Tk. 500,000)
- (2) Investment in shares of a listed company Tk. 120,000
- (3) Donation to charitable institutions as approved by NBR Tk. 33,000.

Requirement:

Compute Mr. Quader's total income and tax liability for the assessment year 2018-19.

Answer to question No. 6:

Name of the Assessee: Mr. A. Quader
Income Year: 2017-2018
Assessment year: 2018-2019
Computation Total Taxable Income

	<u>Tk.</u>	<u>Tk.</u>	<u>Tk.</u>
Income from salary : (u/s 21)			
Basic salary (35,000 Tk. Per month)		420,000	
Bonus (2 months basic)		70,000	
House rent (40% of basic salary)	168,000		
Less: Exempted (lower of 50% of basic salary i.e. 210,000 Tk. or Tk. 300,000 or actual HR allowance)	168,000	-	
Medical allowance	30,000		
Less: Allowable up to 10% of basic salary or Tk. 1,20,000 whichever is lower	30,000	-	
Conveyance allowance	36,000		
Less: Exempted up to	30,000	6,000	
Concessional passage within Bangladesh	130,000		
Less: Exempted as per rule 33G	130,000	-	
(Assumed that it is as per employment contract and actually spent)			
Employer's contribution to RPF (10% of basic)		42,000	
Interest accrued on PF @ 16% p.a.	85,000		
Less: Exempted @ 14.5% p.a.	77,031	7,969	
(Para 25 of 6th Schedule, Part-A of ITO 1984)			
Taxable income from salary			545,969
Income from house properties: (u/s 24,25)			
Annual value (as it seems reasonable)	144,000		
<u>Less: Admissible deductions</u>			
Repair and maintenance (25% of annual value)	36,000		
Municipal tax (1/2 of Tk. 22,000)	11,000		

Insurance premium (1/2 of Tk. 16,000)	8,000	89,000
No deemed income u/s 19(30): as claim 45,500 is greater than 36,000		nil
Shop rent (as it seems reasonable)	30,000	
Less: Repair and maintenance (30% of annual value)	9,000	
	<u>21,000</u>	
Deemed income u/s 19(30): as he claimed nothing against repairs & maintenance	9,000	
Income from House property		<u>30,000</u> 119,000

Income from agriculture: (u/s 26,27)

Sale of paddy on Adhi system (To be added direct as he did not cultivate)	<u>112,000</u>	1,12,000
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Income from business & profession: (u/s 28,29,30)

Share of profit of partnership firm (assumed that firm's income is below taxable so partner will have to pay tax on this income at regular rate)		67,000
Business income	70,000	
Less: Business loss b/f (assuming loss from same business)	50,000	<u>20,000</u>
		87,000
Less: Unabsorbed depreciation (from Tk.80,000)		<u>20,000</u>
Total income from business		67,000

Capital gain: (u/s 31,32)

Profit on sale of shares of MNC Ltd (A Private Ltd. Co.)		4,050,000
Profit on sale of shares of ERZ Ltd (Publicly listed Co.)	2,330,500	
Less: Exempted fully as per SRO no:196 date 30/6/15	<u>2,330,500</u>	
Capital Gain on sale of shop		1,82,500
Deed value to be shown as income as per new section 82C(2)(d)		42,32,500

Income from other sources: (u/s 33,34)

Int. from leasing company (gross, TDS @ 10%)		926,111
Int. on Bank Fixed deposit (gross, TDS @ 10%)		1,39,167
Int. on savings bank a/c (gross, TDS @10%)		61,889
Sale proceeds from trees		12,000
Cash dividend (gross) assumed from listed co.	12,350	
Less: Exempted up to (Para 11A Part A, 6th Schedule)	<u>25,000</u>	-
Total income from other sources		11,39,167

Total Taxable Income

62,15,636

Computation of Investment Tax Rebate

Employee's and Employer's contribution to RPF	84,000
Life insurance premium actual Tk. 65,000 (allowed) maximum 10% of policy value Tk. 5,00,000)	50,000
Investment in shares of listed companies	120,000
Donation approved by NBR	<u>33,000</u>
Total Investment	287,000

Allowable limit of investment:

Lower of -

25% of total income excluding income u/s 82C Tk. (62,15,636 –

1,82,500) x 25%

Actual investment

Maximum limit

15,08,284	
287,000	
<u>1,50,00,000</u>	287,000

Tax rebate on investment (15% of Tk. 2,50,000 + 12% of Tk.37,000)**41,940****Computation of Tax Liability**

	<u>Total income</u>	<u>Tax rate</u>	<u>Tax</u>
First up to Tk. 2,50,000	250,000	0%	-
Next up to Tk. 4,00,000	400,000	10%	40,000
Next up to Tk. 5,00,000	500,000	15%	75,000
Next up to Tk. 6,00,000	600,000	20%	120,000
On balance Tk. 2,33,136	2,33,136	25%	58,284

Total except Profit on sale of shares of MNC Ltd. (A Private Ltd. Co.)
Tk. 4,050,000 and sale of shop Tk. 1,82,500

19,83,136 2,93,284

Add: Tax applied on shop sale

1,82,500 3.10% 5,650

Add: Tax on Capital Gain on sale of shares of MNC Ltd. (A Private Ltd. Co.) assuming that it was sold after 5 years. So tax rate will be 15% as per 2nd schedule.

4,050,000 15% 607,500

Gross tax liability

62,15,636 9,06,434

Less: Investment tax rebate on investment (15% of Tk. 2,50,000
+ 12% of Tk.37,000)

41,940 8,64,494

Less: TDS

- (1) From sale of land u/s 82C
- (2) TDS from Interest from leasing company
- (3) TDS on Interest on Bank Fixed deposit

5,650
92,611
13,917

- (4) TDS on cash dividend
- (5) TDS on Int. on Bank Savings account

1,235*
6,189

Total

1,19,602

Net tax payable u/s 74

7,44,892

Question No.7

Mr. Samuel Gomez works in Bangladesh as an officer in a Multinational Company, headquartered in the USA. His sources of income for the year ended on 30th June, 2018 were as follows:

a. Income from Salary:

- (1) Basic Salary Tk.15,000 per month.
- (2) Dearness allowance 10% of the basic salary
- (3) Two bonuses equivalent to two months' basic salary
- (4) Medical allowance Tk.20,000 per year (actual expense for the year Tk.10,000)
- (5) Entertainment allowance Tk.200 per month
- (6) He has been provided with a free car both for official and personal uses.
- (7) He has also been provided with a rent free quarter, municipal value of which is Tk.80,000 p.a.
- (8) Travel allowance as a part of his contract Tk.100,000 p.a. from where he saved Tk.10,000.

- (9) He contributes 10% of his basic salary to a RPF. His employer also contributed the same.
- (10) During the year, he received interest of Tk. 1,800 @ 12% on RPF.
- (11) He has taken one month's basic salary as advance in the month of June to meet up some of his financial difficulties.

b. Interest on Securities:

- (1) Interest on tax-free government securities Tk.3,000.
- (2) Interest on less-tax government securities Tk.2,700.
- (3) Interest on approved debentures Tk.27,300. He has borrowed Tk.20,000 @ 10% interest to purchase it. Bank also charged Tk.400 to collect the interest.

c. Income from House Properties:

He owns a two-storied house in Dhanmondi. He stays in one floor with his family and another floor is let out for residential purpose at a rate of Tk.9,000 per month. The municipal value of the house is Tk.200,000 per annum. During the year he spent the following expenses for the whole house:

Repair expense Tk.2,000, Insurance expense Tk.4,000, Land development tax Tk.1,500
Sewerage and utilities expense Tk.1,000, Payment of DBH Loan installment Tk.5,000 (including interest of Tk.500).

During the year, the house has remained vacant for two months.

d. Agricultural income: Sale of crops Tk.5,000 and Income from barga Tk.2,000

e. Share of profit from a partnership firm Tk.10,000 (firm paid no tax thereon)

f. Income of spouse and minor child Tk.40,000

g. He won Prize Bond lottery of Tk.300,000 [tax deducted at source @ 20% from it]

h. Foreign Income

During the year Mr. Gomez visited South Korea as a consultant and generated income of Tk.500,000 and he paid income tax @ 25% in South Korea. He brought Tk.250,000 to Bangladesh through bank. From another visit to Uganda he generated income of Tk.300,000 and paid income tax there @ 20%. Bangladesh has DTAA (Double Taxation Avoidance Agreement) with South Korea, but not with Uganda.

i. Income from business and profession Profit from sole-proprietorship business Tk.4,000; last year's loss carried forward Tk.1,000.

j. Income from other sources:

- (1) Interest income from FDR Tk.4,500 (net of TDS @ 10%)
- (2) Profit from Islami bank Tk.900 (net of TDS @ 10%)
- (3) Cash Dividend from ICB Mutual Fund Tk.31,500 (net of TDS @ 10%)
- (4) Cash Dividend from a listed company shares Tk.1,800 (net of TDS @ 10%)
- (5) Sale of forest timber Tk.2,000

Investment claimed by Mr. Gomez:

- (1) Payment of life insurance premium Tk. 8,000 (Policy value Tk.100,000)
- (2) Purchase of a listed company's primary share Tk.5,000
- (3) Purchase of books and magazines Tk.1,000
- (4) Purchase of a share of co-operative society Tk.2,000
- (5) Contribution to Government Zakat Fund Tk.2,500
- (6) Purchase of Furniture Tk.15,000

Requirement: Based on the above information, calculate Mr. Samuel Gomez's total income and tax liability for the assessment year 2018 -19

Answer to question No. 7:

Mr. Samuel Gomez
Income Year: 2017-18
Assessment Year: 2018-19
Computation of Total Income

Heads of Income	Amount	Amount	Amount
1. Income from Salary (Section: 21):			
Basic salary (15,000 X 12)		1,80,000	
Dearness allowance (1,80,000 × 10%)		18,000	
Bonus (15,000 × 2)		30,000	
Medical allowance	20,000		
Less: Exempted – whichever is lower			
- 10% of Basic salary - Tk 18,000	<u>18,000</u>	2,000	
- Maximum limit - Tk. 1,20,000		2,400	
Entertainment allowance (200 X 12)		60,000	
Car facility (1,80,000 × 5% or 60,000 higher)			
Rent Free Accommodation: lower of:	45,000		
25% of basic salary	<u>80,000</u>	45,000	
Or, Rental value			
	1,00,000		
Travel allowance	<u>90,000</u>	10,000	
Less: Exempted – up to actual expense		15,000	
Advance salary		18,000	
Employer's contribution to RPF (10% of Tk. 180,000)			
Interest from RPF	1,800	Nil	
Less: exempted – up to:	<u>1,800</u>		
1/3rd of basic and DA [1,80,000+18,000=1,98,000/3] =			
66,000 or, Interest @ 14.50% [(1,800/12)*14.5] = 2,175			
whichever is lower			
TOTAL			3,80,400
2. Income from interest on Securities (Sec.22):			
Interest on tax free government securities	3,000		
Less: Exempted - Full	<u>3,000</u>	Nil	
Int. on less-tax Govt. securities (2,700 × 100/95)		2,842	
Interest on approved debentures	27,300		
Less: Allowable expenses:			
Bank Charge	(400)		
Interest on loan	<u>(2,000)</u>		
TOTAL		24,900	27,742

3. Income from House Property (Section: 24):			
Actual rental value (9,000 × 12)	1,08,000		
Municipal value (2,00,000 / 2)	<u>1,00,000</u>	1,08,000	
Annual value (whichever is higher)			
Less: Allowable deductions u/s 25			
Repair and maintenance (25% × 1,08,000)	27,000		
Insurance (4,000 / 2)	2,000		
Land development tax (1,500 / 2)	750		
Interest on loan (500 / 2) 250	250		
Vacancy allowance (9,000 × 2)	<u>18,000</u>		
TOTAL		<u>48,000</u>	60,000
Deemed income u/s19(30)			
Repair and maintenance allowed		27,000	
Less: claimed[2,000+1,000=3,000/2=1,500]			25,500
		1,500	
4. Agricultural Income (Section: 26):			
Sale of crops	5,000		
Less: Allowable deductions: Production cost 60%	<u>3,000</u>	2,000	
Income from barga		<u>2,000</u>	
TOTAL			4,000
5. Income from Business and Profession(Sec:28):			
Profit from sole-proprietorship business		4,000	
Less: Carry forward & Set off of previous loss		<u>1,000</u>	
TOTAL			3,000
Share of profit from partnership firm(below taxable)			10,000
6. Income of spouse or minor child			
			40,000
7. Income from other sources (Section: 33):			
Interest on FDR (4,500 × 100/90)		5,000	
Profit from Islami Bank (900 × 100/90)		1,000	
Dividend from ICB Mutual Fund (31,500 × 100/90)	35,000		
Less: Exempted – up to Tk. 25,000	<u>25,000</u>	10,000	
Dividend of listed Public Ltd. Co. (1,800 × 100/90)	2,000		
Less: exempted up to Tk.25,000	<u>2,000</u>	Nil	
Sale of forest timber		2,000	
Prize Bond Lottery[income u/s 82C]		<u>3,00,000</u>	
TOTAL			3,18,000
8. Foreign Income:			
Income from South Korea	5,00,000		
Less: Brought to Bangladesh through official channel (exempted as per 6 th schedule (part-A) para-48 of ITO,1984).On remaining Tk.2,50,000 foreign tax credit will be applicable as per sec.144(4).	<u>2,50,000</u>	2,50,000	
Income from Uganda:(As there is no DTAA between Bangladesh and Uganda, so no foreign tax credit will be allowed as per section 145 as NBR not yet prescribed any rules in this behalf)		<u>3,00,000</u>	5,50,000
Total Income			14,18,642

Calculation of Allowable investment allowance

Particulars	Amount
Life insurance premium	8,000
Share purchase	5,000
Contribution to Govt. Zakat Fund	2,500
Contribution to RPF (18,000 × 2)	<u>36,000</u>
Actual investment	<u>51,500</u>
Maximum limit of allowable investment: 25% (total income – income under 82C) = (1346,800 – 3,00,000) X 25%	2,79,660
or	1,50,00,000
Whichever is lower	<u>51,500</u>
Thus allowable investment allowance for tax rebate would be	<u>51,500</u>

Calculation of Allowable investment credit

15% on Tk.51,500)	7,725
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Calculation of Tax liability:

Particulars	Rate	Amount
On first Tk. 2,50,000	0%	0
On next Tk. 4,00,000	10%	40,000
On rest Tk. 4,68,642	15%	<u>70,296</u>
Total 11,18,642		1,10,296
+ tax on prize bond lottery @ 20% on Tk.3,00,000[82C income]		<u>60,000</u>
		<u>1,70,296</u>
Less: Investment tax rebate (51,500 × 15%)		<u>7,725</u>
		1,62,571
No Tax credit as firm's income was below taxable		<u>Nil</u>
		1,62,571
Less: Double taxation relief (foreign tax credit as per sec 144(4) Average tax rate in Bangladesh is (1,62,571/14,18,642) i.e. 11.46%. Tax relief on income from South Korea (as per DTAA) 30% of 2,50,000 = Tk. 75,000 but maximum relief is at an average rate of the country(2,50,000 X 11.46%) = Tk. 28,650		<u>28,650</u>
		1,33,921
Less: TDS[142+500+100+3,500+200+60,000]		<u>64,442</u>
		<u>69,479</u>



Chapter 19

Assessment of partnership firms

Contents

Introduction
Examination context

Topic list

19.1	Assessment of partnership firm
19.2	Special provisions regarding assessment of firms
19.3	Procedure of assessment of firms
19.4	Rate of tax applicable to firm
19.5	Set-off and carry forward of firm's losses
19.6	Computation of partners' share in the firm's profit or loss
19.7	Liability of a firm for unrecoverable tax due from partners

Worked examples

Introduction

- Illustrate the assessment of partnership firm.
- Identify the scope of income of a firm.
- Specify major provisions regarding the assessment of firm.
- Identify rates for taxing income of a firm.
- State the procedure of assessment of income of firm and its partner.

Practical significance

Assessment of firm and tax liability computation is very significant for every assessee firm. Assessing the income of firm and tax liability thereof is important for persons owning partnership firm and managing it. This chapter recapitulates the scope of total income, non-assessable income, tax credit income, grossing up of income, applicable tax rates and related issues required for completing the assessment of firms. Application of tax rebate by partners on income from partnership firm is exemplified. Professional accountants are required to have sufficient expertise on all of these issues.

Stop and think

Did you realize how important is the assessment for firms? Can you do the assessment of firms independently?

Working context

Assessment of tax is very important for every assessee firm. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of taxable income and tax liability thereof for individual assessee is very important in case of required support for clients' tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of firms and partners as well.
- Identify total income of a firm after deducting allowable expenses.
- Computing investment allowance and tax credit.
- Identify non-assessable income and its application in computing total income.
- Identify the procedure of assessment
- Compute net tax liability after tax rebate due to investment allowance,
- Tax rebate at average rate on income from firm at the time of computing total income of partners.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

19.0 ASSESSMENT OF PARTNERSHIP FIRMS

Section overview

- ➔ Scope of income of firm is different from other assessee.
- ➔ Applicable tax rate of firm is different from companies.
- ➔ On some investments, the firm enjoys investment tax rebate.
- ➔ For TDS, the firm will get full credit at the time of computing net tax liability.
- ➔ With certain terms and conditions, loss under one head can be set off against income under another head/heads
- ➔ If loss under one head cannot be set off completely, it can be carried forward to succeeding 6 years to set off against the income under the same head.

19.1 Assessment of firms

The word firm includes a partnership firm. Like individuals, firm's income is also assessed to compute tax payable by the firm. One point is very important to remember that assessment of partnership firm and partners are done separately. In tax law, partnership firm and partners are totally different, have different income though the tax rates are same with some exceptions.

19.2 Special provisions regarding assessment of firms

A firm can be assessed –

Under section 82: assessment on correct return basis

Under section 83(2): assessment on the basis of hearing

Under section 84: best judgment assessment

Under section 85: assessment of firms

A firm can also be assessed in special cases –

Under section 86: Assessment in case of change in the constitution of a firm

Under section 87: Assessment in case of constitution of new successor firm

Under section 88: Assessment in case of succession of business otherwise death

Under section 89: Assessment in case of discontinued business

19.3 Procedure of assessment of firms

As the assessment of firm and its partners are sometimes non-detachable, it is important to remember to assess their income separately. Otherwise, there is a strong possibility of integrating partners' income with that of the partnership firm to whom they are the partners. It is advised to follow the procedures as mentioned below to avoid possible mistakes.

For the firm:

(1) Start with the accounting profit as computed in partnership Profit and Loss Account.

(2) Adjust the profit in line with –

Section 28: Income from business or profession

Section 29: Deductions from income from business or profession

Section 30: Deduction not admissible in certain circumstances specially section 30(b)

(3) The profit so computed will be taxable profit of the firm and taxable in the hand of the firm. However, such profit (obviously before tax) will be distributed among the partners as per their respective profit and loss sharing ratio.

- (4) The profit as calculated above is taxable provided that the total income exceeds the present exemption limit, i.e., Taka 2,50,000.(assessment year 2016-17)
- (5) The firm may also claim tax rebate @ 15% on allowable investments (if any) like individual.

For partners

- (6) Partners' taxable income will be share of profit or loss as computed in step 3. The total income will be taxed as per the individual tax rates. Income from firm is to be considered as tax free income because tax on this part is already paid by the firm, and partners will get rebate at average rate on their partnership income from tax so computed as per 6th schedule (part-B) para-16. They may also claim rebate for qualifying amount of investment allowance, if any, in normal way.

Note: Firms may not be required to pay tax if income is less than Taka 2,50,000 or carry forward and set off of previous years losses. In such a situation, partners will pay tax in a normal way but cannot claim any rebate on share of profit received from firm, as firm has not paid any tax on such profit.

19.4 Rate of tax applicable to firm

Income of a firm is taxable at the same rate applicable to individuals which are as follows:

Total income slabs		Applicable tax rates
On first	Tk. 2,50,000	Nil
On next	Tk. 4,00,000	10%
On next	Tk. 5,00,000	15%
On next	Tk. 6,00,000	20%
On next	Tk. 30,00,000	25%
On balance		30%

It is to be mentioned here that the minimum amount of tax should not be less than Taka 5,000 or 4,000 or 3,000 depending on the location if income exceeds Tk.2,50,000.

19.5 Set off and carry forward of firm's losses

- (1) In case of losses sustained by a firm under any head of income shall be set off only against the income of the firm under any other head and not against the income of any of the partners of the firm [U/s 42(3)(a)].
- (2) Any loss from business can be carried forward for setting off against such income, if any, for 6 consecutive years (U/s - 38).
- (3) If there is any loss from any speculation business, it should be set off in the same year against income from other speculative businesses and if there is no other such business, it can be carried forward for six consecutive years to set off only against the income from such speculative business (U/s - 39).
- (4) If there is any loss under the head 'capital gain' can be carried forward for six consecutive years if the losses exceed Taka 5000 for setting off against income from capital gain only so much of such loss as exceeds Taka 5,000 (U/s - 40).
- (5) If there is any loss under the head 'agricultural income' can also be carried forward for setting off against income from this head for six consecutive years (U/s - 41).
- (6) In case of changes in constitution of a firm, the proportionate loss of a retired or deceased partner cannot be carried forward by the firm [U/s - 42(5)(a)].

19.6 Computation of partners' share in the firm's profit or loss [section 43(3)]

To compute partners' share in the firm's profit or loss, we need to adjust any interest, salary, commission or remuneration. Then the balance will be distributed among the partners as per the respective profit and loss sharing ratio. So the share of a partner in a firm will be taken to be any salary, interest, commission or other remuneration payable to him by the firm in the income year increased or decreased respectively by his share in the balance of the profit or loss of the firm.

If the partners have their individual income with the shared income from the firm, such shared income should be added with other individual income to compute the partners' total taxable income. If the firm has already been taxed, partners will not pay tax on such shared income (Paragraph 16 of Part B of Sixth Schedule). But, this addition of shared income to the partners' other income may enhance the rate of tax for such other income or may bring the partners within the ambit of taxation where such partners' individual income was below the taxable limit.

19.7 Liability of a firm for unrecoverable tax due from partners (section 98):

Where any tax payable by partner of a firm in respect of his share of the income from the firm cannot be recovered from him, the Deputy Commissioner of Taxes shall notify such amount of the tax to the firm. Upon notification, the firm so notified shall be liable to pay the said tax and, for the purposes of recovery thereof, shall be deemed to be an assessee in respect of such tax.

Worked examples

Example 1:

Ronob, Sanob and Manob are the three equal partners of Ronob & Brothers. The profit and loss account for the year ended on June 30, 2018 was given below:

Ronob & Brothers
Profit and Loss Account
For the year ended on June 30, 2018

Particulars	Amount (Tk.)	Particulars	Amount (Tk.)
Rent	72,000	Gross profit	8,00,000
Utilities	48,000		
Commission [including commission paid to Partner Manob Tk.25,000]	88,000		
Advertisements	22,000		
Income tax	20,000		
Interest on capital:			
Ronob – 30,000			
Sanob – 20,000			
Manob – <u>30,000</u>	80,000		
Salaries:			
Ronob – 26,000			
Manob – <u>24,000</u>	50,000		
	4,20,000		
Net profit	<u>8,00,000</u>		<u>8,00,000</u>

Other information:

1. No tax was deducted at source from office rent
2. Tk. 25,000 of commission is given to Mr. Manob for his special assignment.

3. Partners have income from different sources as follows:

Sources	Mr. Ranob	Mr. Sanob	Mr. Manob
Income from house property	60,000	-	40,000
Income from interest on securities	50,000	80,000	-
Agricultural income	-	-	50,000
Income from other sources	25,000	25,000	25,000

Required:

1. Compute total income of the firm
2. Compute tax liability of the firm.
3. Distribute firm's income among the partners.
4. Compute total income of the partners.
5. Compute net tax liability of the partners.

Solution 1:

Requirement 1: Total income of the firm

Particulars	Amount (Tk.)	Amount (Tk.)
Net profit as per Profit and Loss A/C		4,20,000
Add: Inadmissible exp:		
Distribution to the partners:		
Interest on capital:		
Ranob – 30,000		
Sanob – 20,000		
Manob – <u>30,000</u>	80,000	
Salaries:		
Ranob – 26,000		
Manob – <u>24,000</u>	50,000	
Commission:		
Manob – <u>25,000</u>	25,000	1,55,000
Income tax(as it is not an expense rather appropriation of profit and not allowed as expense under section 29)		20,000
Total income of the firm		<u>5,95,000</u>

Requirement 2: Tax liability of the firm

Income Slabs	Tax rate	Amount (Tk.)
On first Tk. 2,50,000	0%	Nil
On next Tk. 3,45,000	10%	34,500
		<u>34,500</u>

Requirement 3: Distribution of firm's income among the Partners

Particulars	Partners			Total	Amount left to be distributed
	Ranob	Sanob	Manob		
Amounts to be distributed					5,95,000
Interest on capital	30,000	20,000	30,000	80,000	5,15,000
Salaries	26,000	24,000	-	50,000	4,65,000
Commission	-	-	25,000	25,000	4,40,000
Profit (allocated on 1:1:1 ratio)	1,46,666	1,46,666	1,46,667	4,40,000	
Total amount allocated	<u>2,02,666</u>	<u>1,90,666</u>	<u>2,01,667</u>	<u>5,95,000</u>	

Requirement 4: Total income of the partners

Heads of Income	Ronob	Sanob	Manob
1. Income from interest on securities	50,000	80,000	-
2. Income from house property (less repairs @ 25%) assuming it was let out for residential purpose.	45,000		30,000
3. Agricultural income (less cost of cultivation @ 60%)			20,000
4. Income from partnership firm	2,02,666	1,90,666	2,01,667
5. Income from other sources	25,000	25,000	25,000
Total income	3,22,666	2,95,666	2,76,667

Requirement 5: Net tax liability of the partners

Income Slabs	Rate	Amount of Tax	Ronob	Sanob	Manob
On first Tk. 2,50,000	0%	Nil	Nil	Nil	Nil
On next Tk. 72,666	10%	7,267	7,267		
Tk. 45,666	10%			4,567	
Tk. 26,667	10%				2,667
			7,267	4,567	2,667
Less: Tax rebate on firm's income at average rate					
Ronob (2,02,666/3,22,666 x 7,267)			4,564		
Sanob (1,90,666/2,95,666 x 4,567)				2,945	
Manob (2,01,667/2,76,667 x 2,667)					1,944
Net tax liability			2,703	1,622	723

[1] All partners will have to pay minimum tax as their income exceeds the minimum taxable ceiling depending on the location.

[2] Section 30(aa) will not be applicable for non-deduction of tax at source from office rent, as partnership firm is not the withholding tax authority at section 53A of ITO, 1984.

Worked example 2

Asha, Pasha, and Rasha are three equal partners of a firm, **Asha, Pasha & Rasha Associates**. For the income year ended June 30, 2018, the firm produces the following information for the purpose of computing total income and tax liability of the firm as well as its partners.

- The firm owns a commercial building partly (one half) occupied by the firm to operate its own business and partly (another half) let out at a monthly rent of TK 35,000. Municipal value of the building is TK 800,000. During the year, the firm has also earned TK 40,000 as advance and TK 10,000 as first year's rent from a company by letting its top floor to hoard a commercial advertisement.
- The firm is engaged with trading of garments supplies which resulted following gross margin amount for the year:

Particulars	Amount (TK)	Amount (TK)
Sales		5,000,000
Less: Cost of goods sold		
Beginning inventory	800,000	
+ Purchase	4,200,000	
Cost of Goods available for sale	5,000,000	
- Ending inventory	1,000,000	
Cost of goods sold		4,000,000
Gross margin		1,000,000

(c) Other relevant information is given below:

Stocks are always valued at 2% above cost. Analysis also reveals that purchase amount is overstated by TK 200,000 for the year. Total operating expenses charged during the period amounted to TK 450,000 which included following items among other things:

(i) Maintenance to building:

	Amount (TK)	Amount (TK)
Let –out portion	30,000	
Portion used for business	<u>20,000</u>	
		50,000

(ii) Municipal Taxes: Total amount of municipal taxes paid for the year was TK 40,000 out of which the tenant bears TK 10,000.

(iii) Annual contribution to Cotton Dealers Association, a trade association is TK 10,000.

(iv) Contribution to Aga Khan Development Network was TK 50,000.

(v) All of the partners were active and took part in running business. Salaries paid to the partners were TK 40,000 to Asha, TK 50,000 to Pasha and TK 30,000 to Rasha.

(vi) Legal charges amounts to a total of TK 50,000 including a fine of TK 10,000 charged due to its attachment with illegal form of business.

(vii) The firm charged TK 15,000 against profit to write-off uncollectible amount of receivable which is not allowed by the DCT.

(viii) The firm incurred a loss of TK 50,000 from speculative business.

(ix) Accounting depreciation charged was TK 38,000 which was TK 3,000 higher than tax depreciation.

(d) Asha had no other income during the year; however, Pasha and Rasha were also partners of another firm. The respective income of Pasha and Rasha from the firm for the year ended 30th June 2018 were as under:

Partners	Salary	Interest	Profit/ (Loss)
Pasha	TK 40,000	TK 10,000	TK (50,000)
Rasha	TK 60,000	TK 20,000	TK 20,000

(e) Rasha had income from interest on approved commercial securities of TK 30,000. Bank charged TK 300 as collection fee and TK 3,000 as interest on borrowing, money borrowed from the bank for investment in approved commercial securities.

Compute tax liability of 'Asha, Pasha & Rasha Associates' for the assessment year 2018-2019 and total income in the hands of partners from all sources.

Solution 2

(a) Computation of total income of the firm:

Particulars	Taka	Taka	Taka
(1) Income from house property (U/s - 24)			
Annual value			
Actual rent (12 months @ TK 35,000)	420,000		
Add: municipal tax paid by the tenants	<u>10,000</u>		
or	430,000		
Municipal value (800,000/2)	400,000		
Whichever is higher		430,000	
Less:			
repairs and maintenance (30% of annual value)	129,000		
municipal tax for let-out portion (1/2 of 40,000)	<u>20,000</u>		
		<u>149,000</u>	
Add: unspent amount of maintenance u/s 19(30) [1,29,000-30,000]		281,000	
		99,000	
Net income from house property			3,80,000
(2) Income from business (U/s - 28)			
Gross profit as per Trading Account		1,000,000	
Add: Overstatement of opening stock (TK 800,000/1.02*0.02)	15,686		
Overstatement of purchase	<u>200,000</u>		
	215,686		
Less: Overstatement of Closing Stock (TK 1,000,000/1.02*0.02)	<u>19,608</u>		
		<u>196,078</u>	
		1,196,078	
Less: Operating expenses		<u>450,000</u>	
		746,078	
Add: Expenses inadmissible			
Contribution to Aga Khan Dev. Network	50,000		
Municipal tax— ½	20,000		
Salaries to partners	1,20,000		
Legal charges	10,000		
Bad debt Write-off which is not allowed	15,000		
Loss on speculative transactions	50,000		
	<u>38,000</u>		
Accounting depreciation		<u>3,03,000</u>	
Less: Admissible expenses		10,49,078	
Tax depreciation		<u>35,000</u>	
Net income from business			10,14,078
(3) Income from other sources (U/s - 33)			
From display of advertisement			50,000
Total income of the firm			<u>14,44,078</u>

Computation of investment allowance:

Actual:

Actual:
Contribution to Aga Khan Development Network

Tk. 50,000

Maximum limit:

25% of total income, i.e., 25% of 14,44,078 = Tk. 3,61,020

Or Tk. 1,50,00,000 whichever is less

Qualifying amount for investment allowance

Tk. 50,000

Computation of tax liability of the firm:

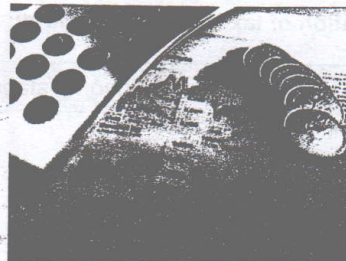
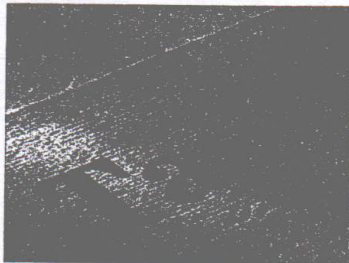
Income slabs	Tax rate	Amount (Tk..)
On first Tk. 2,50,000	0%	Nil
On next Tk. 400,000	10%	40,000
On next Tk. 5,00,000	15%	75,000
On next Tk. 2,94,078	20%	58,816
On total Tk.14,44,078		1,73,816
Less: tax credit on investment allowance (15% of Tk.. 50,000)		7,500
Net tax liability		<u>1,66,316</u>

Allocation of profit among the partners

Particulars	Partners			Total	Amount left to be distributed
	Asha	Pasha	Rasha		
Amounts to be distributed					14,44,078
Salaries	40,000	50,000	30,000	1,20,000	13,24,078
Profit (allocated on 1:1:1 ratio)	4,41,359	4,41,359	4,41,359	13,24,078	
Total amount allocated	<u>4,81,359</u>	<u>4,91,359</u>	<u>4,71,359</u>	<u>14,44,078</u>	

Total Income in the hands of the partners:

Heads of income	Asha	Pasha	Rasha
1. Income from this firm	4,81,359	4,91,359	4,71,359
2. Income from another firm			1,00,000
3. Income from interest on securities			26,700
Total income	<u>4,81,359</u>	<u>4,91,359</u>	<u>5,98,059</u>



Chapter 20

Assessment of companies

Contents

Introduction
Examination context

Topic list

20.1	Companies
20.2	Residential status of companies
20.3	Submission of return
20.4	Set-off and carry forward of losses
20.5	Tax withholding
20.6	Advance payment of Tax
20.7	Applicable tax rates for companies
20.8	Tax credit
20.9	Corporate Social Responsibility (CSR)
20.10	Scope of income

Worked examples

Introduction

- Define different type of companies.
- Illustrate the assessment of companies.
- Identify the scope of income of companies.
- Specify major provisions regarding the assessment of companies.
- Identify rate for tax on varieties of income of a company.
- State the procedure of assessment of company's income.
- Specify the special provisions of assessing income of bank, insurance and leasing companies.

Practical significance

Corporate assessment is full of complexities that require special skill to handle. Understanding corporate accounting and converting it in line with the requirements of tax authorities is the first hurdle. Assessable income, non-assessable income, rebate, application of CSR, applying different rates for capital gain, dividend income and other income are some of the complexities.

As professional accountants mostly serve corporate houses, this chapter becomes mostly significant for them. Again, corporate tax planning, now-a-days, becomes a norm which necessitates extra skill on part of the qualified accountants. Government also requires this type of services from professional accountants due to the reasoning of maximizing its income.

Other common requirements like TDS, set-off and carry forward of losses, DTAA, grossing up of income are also applied in this chapter.

Stop and think

Did you realize that the assessment of companies is very important from every perspective? Are you confident enough to do the assessment of companies independently?

Working context

Assessment of tax is very important for every classes of assessee. An assessee must require to be assessed in any way. Accountants have a great role to provide the technical assistance to their client in case of assessment. As there are many conditions, rules and procedures for different types of assessments, accountants' support sometime very significant to complete the assessment of their clients. In case of corporate client, this chapter becomes very significant.

Many clients are requiring the support for correct assessment from accountants in every year. Detailed knowledge of accountants on the technicalities of computation of total income and tax liability thereof for corporate assessee is important in case of required support for clients' tax assessment.

Syllabus links

The topics covered in this chapter have the significance for professional study as you can utilize the knowledge throughout the application level and case study and also in your practical life.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Do the assessment of corporate house.
- Identify total income of a company after adjusting expenses.
- Computing tax rebate in different scenario.
- Identify non-assessable income and its application in computing total income.
- Identify the procedure of assessment.
- Compute net tax liability after giving tax credit.
- Do the specialized assessment of bank, insurance and leasing companies.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

20.0 ASSESSMENT OF COMPANIES

Section overview

- ➔ Scope of income for company is different from other assessee.
- ➔ Applicable tax rates for company are different from other assessee.
- ➔ Capital gain and dividend income of companies are taxable at different rates.
- ➔ Assessment of banks, insurance and leasing companies are to some extent different.
- ➔ Companies will enjoy tax rebate for CSR activities in specific areas.
- ➔ Company assessee will enjoy some common benefits like set-off and carry forward of losses, tax rebate, TDS adjustments, credit of advance tax etc.

20.1 Companies

Assessment of companies means applying the assessment procedures on the income of companies. Company has a definite meaning in income tax ordinance. For the purpose of company tax assessment, some related definitions are produced below:

"Company" means a company as defined in the Companies Act, 1913 or Companies Act, 1994 and includes -

- (a) a body corporate established or constituted by or under any law for the time being in force;
- (b) any nationalized banking or other financial institution, insurance body and industrial or business enterprise;
- (c) an association or combination of persons, called by whatever name, if any of such persons is a company as defined in the Companies Act, 1913 (VII of 1913) or Companies Act, 1994;
- (d) any association or body incorporated by or under the laws of a country outside Bangladesh; and
- (e) any foreign association or body, not incorporated by or under any law, which the Board may, by general or special order, declare to be a company for the purposes of this Ordinance [U/s - 2(20)].

Companies Act 1994 defines 'company' to mean a company formed and registered under the act or an existing company [U/s - 2(c) of Companies Act, 1994]. Again, 'existing company' means a company formed and registered under any law relating to companies in force at any time before the commencement of the act, and is in operation after commencement of the act [U/s - 2(h) of Companies Act, 1994].

However, at the time of prescribing the rate of taxes, companies are classified as -

- | | |
|--|--|
| 1) Bank, Insurance, Financial Institutions | |
| 2) Merchant Bank | |
| 3) Mobile Phone Operator Company | a) Private Limited Company
b) Public limited company |
| 4) Tobacco Manufacturing Company | |
| 5) Other Company | a) Publicly traded company
b) Non-publicly traded company |

As per the provision of Income Tax Ordinance of computing profit and loss through schedules, companies are classified as -

- | | |
|---------------------|---|
| 4th Schedule | Computation of the profits and gains of insurance business |
| 5th Schedule-Part A | Computation of profits and gains from the exploration and production of petroleum and the determination of the tax thereon |
| 5th Schedule-Part B | Computation of profits and gains from the exploration and extraction of mineral deposits (other than oil and gas) in Bangladesh |

Due to the typical nature of business, IT Ordinance prescribes different methods of computation of profit and loss from these businesses.

Whatever the definitions or classifications made, profits or gains from any type of companies are taxable at specified rates.

20.2 Residential status of companies

Residential status of companies is different from individuals and IT Ordinance prescribes different rules for that. On the basis of residential status applicable for companies, there may be Bangladeshi or foreign companies. The provisions for deciding the residential status of companies are given below:

"Resident", in respect of any income year, means a Bangladeshi company or any other company the control and management of whose affairs is situated wholly in Bangladesh in that year [section-2(55)(c)]. And, "non-resident" means a person who is not a resident [section - 2(42)]. Thus, to be resident;

1. The company should be a Bangladeshi company, i.e., formed and registered under the Companies Act, 1913 (VII of 1913) or Companies Act, 1994 and includes a body corporate established or constituted by or under any law for the time being in force in Bangladesh having in either case its registered office in Bangladesh; or
2. Any other company the control and management of whose affairs are situated wholly in Bangladesh in that year.

If any of the two conditions have not been fulfilled, the status of such a company will be non-resident.

20.3 Submission of return

A company assessee shall have to file return of income setting forth therein its total income by the 15th day of the 7th month from the end of the income year. However, on an application from the company, the DCT may extend the return filing period up to 2 months from the date so specified and he may further extend the date up to another 2 months with the prior approval of the IJCT. The return should be signed by the principal officer as defined in section 2(48) of IT Ordinance and the return of income for companies should be submitted in prescribed form (Form: IT 11-GHA2016).

20.4 Set-off and carry forward of losses

Where loss is assessed in any head of income, the company is entitled to set-off the loss against its income assessed in other heads of that year. However, loss on speculation business and loss on capital gain cannot be set-off against income from any other head. If there is no income from other speculative business or capital gain from sale of other assets in the same year; such loss can be set-off only against the income of respective speculative business or capital gain in the coming years, if any. When loss cannot be wholly set-off, then the unabsorbed loss shall be carried forward but for not more than six successive assessment years.

Unabsorbed depreciation loss can be carried forward for unlimited period. Loss so carried forward is to be set-off against income of the respective head only. It is to be noted that loss from the source of exempted income cannot be set-off against any source of income and loss at any head cannot be set-off against income from tobacco manufacturing business.

20.5 Withholding tax return

Finance Act 2011 introduces the submission of withholding tax return by inserting a new section (75A: Return of withholding tax). Every company shall file a return of withholding tax to the DCT where the company is being assessed. Such return shall be prepared in the prescribed form and signed and verified by the principal officer of the company. Such return shall be filed half yearly, by the 31st day of January and 31st day of July and it must accompany a statement of deduction/collection of tax along with the copy of treasury challan.

However, the last date for the submission of withholding tax return may be extended by the DCT up to 15 days from the date so specified.

20.6 Advance payment of tax

Every company shall have to pay advance tax in four equal installments falling on 15th Sept.; 15th Dec.; 15th March and 15th June of each financial year if the latest assessed income exceeds Tk. four lakh. However cigarette manufacturing company will pay advance tax monthly @ 3% on net sale.

On failure of payment of any installment, the company will be deemed to be an assessee in default. Penalty may be imposed for such default. If a company estimates that its income during any financial year will be less than the last assessed income, it may submit an estimate of income and pay the advance tax accordingly.

If the amount of advance tax together with the tax deducted at source, if any, is less than 75% of the tax payable on the basis of regular assessment, simple interest @10% is leviable on the amount by which the tax so paid and deducted falls short of 75% of the assessed tax. On the other hand, the company is entitled to receive interest @10% on the amount by which the aggregate sum of advance tax paid during a financial year exceeds the amount of the tax payable on the basis of regular assessment.

20.7 Applicable tax rates for companies

Charge of minimum tax for companies and partnership firm: section 82C(4)

Notwithstanding anything contained in any other provisions of this Ordinance, every company shall, irrespective of its profits or loss in an assessment year for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of earlier year or years or the claiming of allowances or deductions (including depreciation) allowed under this Ordinance, be liable to pay minimum tax @ 0.60% of the amount representing such company's gross receipts from all sources for that year. However the rate of minimum tax for tobacco manufacturing company is 1% and for mobile phone operator 0.75%

Moreover if any new industry engaged in manufacturing of goods, then the rate will be 0.10% instead of 0.60% which would be effective for 1st 3 years.

For the purposes of this section, 'gross receipts' means-

- (a) all receipts derived from the sale of goods;
- (b) all fees or charges for rendering services or giving benefits including commissions or discounts;
- (c) all receipts derived from any heads of income.

Every partnership firm having gross receipts of more than Tk. 50,00,000/ will be required to pay minimum tax @0.60% on its gross receipt or tax calculated on the basis of total income whichever is higher.

Illustration

Xerox Machine Ltd. is a Private Limited Company registered in Bangladesh. Following information is related to the income year 2017-18:

Net operating income	Tk. 12,50,000
Interest income	<u>Tk. 2,50,000</u>
Total income	Tk. 15,00,000

Sales revenue / turnover for the year is reported as Tk. 2,00,00,000. Applicable income tax rate is 35%. Calculate income tax liability of Xerox Machine Ltd. for the year.

Answer:

Income tax at regular rate i.e. 35% is Tk. 5,25,000 (15,00,000 X 35%).

Gross receipts of the company: (Tk. 2,00,00,000 + Tk. 250,000) = Tk. 2,02,50,000

Minimum tax = (Tk. 2,02,50,000 X 0.60%) = Tk. 1,21,500.

Since, the regular tax is greater than the minimum tax; the tax liability of Xerox Machine Ltd. will be Tk. 5,25,000.

Corporate tax rate at a glance

Types of company	Types of Income		Tax rates for AY	
			2017-18	2018-19
Bank, Insurance, Financial Institutions	(1) Capital gain arising out of	Transfer of stocks and shares of any company registered under Companies Act, 1994	10%	10%
		Transfer of other capital assets	15%	15%
	(2) Dividend income	Dividend declared by any company registered under companies act 1913 or 1994 or any foreign company	20%	20%
	(3) Other income	Both for publicly and not publicly traded bank approved by the Govt.	37.5%	40%
		Foreign bank	40%	42.5%
Merchant Bank	Taxable income	Any merchant bank	37.5%	37.5%
Mobile Phone Operator Company	(1) Taxable Income	Private Limited Company	45%	45%
	(2) Taxable Income	If converted into public limited company by issuing minimum 10% of shares through IPO	40%	40%
Cigarette Manufacturing Company	(1) Taxable income	Private Limited Company	45%	45%
	(1) Taxable Income	Publicly Traded Company	45%	45%
Other Company	(1) Capital gain arising out of	Transfer of stocks and shares of any company registered under Companies Act, 1994.	10%	10%
		Transfer of other capital assets	15%	15%
	(2) Dividend income	Dividend declared by any company registered under companies act 1913 or 1994 or any foreign company	20%	20%
	(3) Other income	-For publicly traded company:	25%	25%
		Non-publicly traded company, and private limited company and other companies including non-resident company.	35%	35%
	(4) Minimum tax	On gross receipts	0.60%	0.60%

20.8 Tax rebate

If any Non-publicly traded company transfers its minimum 20% share through IPO, then also 10% tax rebate facility will be applicable for that year.

If any assessee owned any small and cottage industry engaged in the production of goods at less developed area or least developed area, it will enjoy tax rebate at a rate as mentioned below:

Particulars	Rate of rebate
If production in volume exceeds 15% but does not exceed 25% as compared with preceding year.	5% of tax on such income
If production in volume exceeds 25% as compared with preceding year.	10% of tax on such income

20.9 Corporate Social Responsibility [SRO 229- dated 04-07-2011, SRO.223 dated. 27/06/2012 and SRO 186- dated 01-07-2014]

Allowable limit: Maximum limit of allowable expenditure under the head Corporate Social Responsibility (CSR) is 20% of total income or Tk. 12,00,00,000; or actual CSR whichever is lower. If actual expenditure exceeds this limit, such amount exceeding the limit cannot be used to compute tax rebate.

Tax rebate: Tax rebate will be computed @ 10% on such expenditure for CSR within the maximum limit.

Conditions: To claim tax rebate against CSR, the company must fulfill the following conditions:

1. Must pay salaries and allowances to its worker regularly and must have waste treatment plant if it involves with the production of industrial goods;
2. Must pay income tax, VAT and duty timely and must repay institutional loans;
3. Can only donate money to the institutions recognized by the government for the purpose of CSR;
4. Must fulfill all rules as per Bangladesh Labour Law, 2006.
5. Amount spent for CSR will not be considered as business expenditure.
6. Documents in support of actual CSR expenditure to be submitted to the concerned DCT.
7. Submit CSR plan to NBR and obtain exemption certificate.

However, no company can charge such expenditure on account of CSR in manufacturing or profit and loss account. Such company shall also submit sufficient documents with DCT to prove whether the expenditure claimed as CSR is really spent.

Areas of CSR

To encourage the companies to contribute towards the society, a new provision has been introduced in 2009 through an SRO and thereafter the area has been expanded in 2010 and further modified in 2011. In the year 2012 two new areas have been included and one area shifted to 6th Schedule (Part-A) Para-47. In 2014 one new area has been added. The present areas are:

1. Donation through any government bodies to reduce the misery of people of areas affected by natural calamities like Cyclone, Earthquake, Hurricane, Flood etc.;
2. Donation to the institutions engaged in the establishment of old home and its management;
3. Donation to any social organization engaged in the Welfare of mentally or physically disable people;
4. Donation to the educational institutions engaged in educating street / homeless children;
5. Donation to such institutions engaged in housing projects for people living in slums;
6. Donation to social organizations involved in building public awareness on women-right and against dowry system;
7. Donation to organizations involved in feeding and rehabilitating orphan / homeless children;

8. Donation to organizations involved in research on liberation war, campaign to uphold the spirit of liberation war and welfare of freedom fighters;
9. Donation to organizations engaged in maintaining healthy sewerage systems in Chittagong hill tract, alluvial land, river breakage areas;
10. Donation to organizations engaged in the treatment of hare-lipped, cataract; cancer, leprosy;
11. Donation to individuals and organizations engaged in providing Medicare services to the Acid Victims
12. Donation to specialized hospital providing free medical services to poor patients and work for improving the quality of treatment e. g., hospitals for Cancer, Liver, Kidney, Thalasemia, Eye and Cardio.
13. Donation to public universities;
14. Donation to any government recognized educational institution established for providing educational scholarship and financial assistance to poor freedom fighters' children along with promoting technical and vocational education to the poor meritorious students;
15. Donation to government or MPO included private educational institution engaged in establishing lab for training computer or IT or implementing English education programs;
16. Donation to organizations engaged in providing technical and vocational training to unskilled or semi-skilled workers for exporting manpower;
17. Donation to organizations engaged in the development of infrastructure and training for sports at national level;
18. Donation to national level museum established or to be established for preserving the memory of education war;
19. Donation to national level institutions engaged in protecting the memory of the father of the nation; and
20. Donations made to non-profit voluntary social welfare organizations engaged for running rehabilitation center, creation of awareness and treatment of HIV, AIDS and Drug addicted
21. Donations made to non-profit voluntary social welfare organizations engaged for running rehabilitation center for recovered children/women of cross boarder trafficking.
22. Donation to Govt. approved fund for helping victims of natural disaster or for any tournament or for any national level program.

20.10 Scope of income

Corporate income should be computed with reference to the following sections:

Section 28: Income from business or profession

Section 29: Deductions from income from business or profession

Section 30: Deduction not admissible in certain circumstances

However, in terms of tax rate, income is classified as –

- a) Capital gain
- b) Dividend income
- c) Income other than capital gain and dividend

Worked examples and solutions

Example 1

M/s. John Morris Inc. is a multinational company doing business in Bangladesh. The company filed return of income for the assessment year 2018-19 showing net income of Tk. 30,00,000. Examination of the audited statement of accounts filed with the return of income revealed the following:

- (a) Salary includes Tk. 3,30,000 paid to a Director working at the head office at California. He has never visited Bangladesh and no tax, as such, has been deducted at the time of making the payment.
- (b) Head office expenses charged Tk. 11,00,000. No evidence could be produced for this other than HO auditors' certificates.

- (c) Fine of Tk.11,000 paid for violation of customs law charged to P & L Account.
- (d) Two Nissan Petrol Jeep purchased for Tk. 55,00,000 during the year. Depreciation @ 20% charged on the full cost of the vehicles.
- (e) To procure business Tk.10,00,000 has been paid as commission to a local agent. In making the payment, the provision of section 53E of IT Ordinance, 1984 has not been complied with.
- (f) The company sold a motor vehicle for Tk. 4,65,000. Original cost of the vehicle was Tk. 5,25,000 and the written down value was Tk. 3,25,000. This has not been reflected in the accounts.
- (g) Tk.15,000 donated to an un-recognized school.
- (h) Miscellaneous expenses include Tk. 2,72,000 paid as salaries to three servants who are working at the residence of the Managing Director.
- (i) Conveyance expenses include Tk. 3,20,000 paid for the plane fare of wife and son of the Managing Director for the visit of the neighboring countries.
- (j) Interest expense claimed at Tk. 33,50,000. The company has outstanding bank loan of Tk. 2.10 crore. The company advanced Tk. 75,00,000 interest-free loan to a sister-concern in Bangladesh.

From the above information compute the total income of the company for tax purpose.

Solution 1

M/s John Morris Inc.
Assessment year 2018-19

Particulars:-	Amount(Tk.)	Amount (Tk.)
Net income		3,000,000
Add: <u>Inadmissible expenses</u>		
Director's salary {30(a)} [note-1]	330,000	
Excess depreciation charged on motor vehicle [note-6]	1,00,000	
Donation to an un-recognized school	15,000	
Excess perquisites {30(e)} [note-7]	42,000	
Revenue gain on sale of motor car [note-5]	140,000	
Fine for violation of customs law [note-2]	11,000	
Interest on bank loan [note-3]	1,196,429	
Head office expense [note-8]	<u>1,100,000</u>	<u>2,934,429</u>
Adjusted profit		59,34,429
Deduct: head office expense – 10% of disclosed net profit		<u>3,00,000</u>
Total income		<u>56,34,429</u>

Notes:

- (1) Salary paid to a non-resident director without deduction of tax at source is inadmissible.
- (2) Fine or penalty for breach of law is not allowable expenditure.
- (3) Interest on borrowed capital is generally allowed when taken for business purposes. But borrowed fund given to the sister concern is not for the business and therefore, proportionate interest has been disallowed. Ref section 29(1)(iii) proviso and case ref: CIT v United Breweries.
- (4) Section 53E of ITO, 1984 requires deduction of tax at source on the payment of commission for distribution of assessee's products, not for procurement of business for the company. So nothing wrong in this case and that's why nothing to be disallowed.
- (5) Difference between sale proceeds of the motor vehicle and its written down value of Tk. 1,40,000 is a business profit.
- (6) Under the Third Schedule for depreciation purpose cost of each motor vehicle is restricted to Tk. 25,00,000 and 20% depreciation on two cars therefore should be Tk. 10,00,000 whereas on Tk. 55,00,000 the company claimed Tk. 11,00,000, Excess of Tk. 1,00,000 has been added back.

- (7) Servant's salary and travel plane fare are perquisites to the managing director of a total sum of Tk.2,72,000+Tk.3,20,000= 5,92,000 under section 30(e) perquisites are allowable up to Tk.5,50,000. Therefore, the excess OF Tk. 42,000/ has been added back.
- (8) Head office expense is allowed up to 10% of the disclosed net profit u/s 30(g).

Worked example 2

The profit and loss account of Care Pharmaceuticals for the year ended on June, 30, 2018 reports net income of taka 20,00,000. A careful scrutiny of accounts and supporting documents revealed the following facts:

- (a) During the year the company sold some of its pharmaceutical supplies that remained unused for a long time in the storeroom. The company sold the supplies at a loss of taka 150,000 as the expiry period is very close and charged such loss against current year's profit.
- (b) The company recovered taka 20,000 from bad debt which was written off in earlier year and was allowed by the tax department. The amount so recovered was credited to sundry debtors account.
- (c) The company had taka 80,000 interest due to Bangladesh Development Bank Ltd. in the income year 2012-2013 and such interest was allowed as allowable deduction in that year. Still, such interest remains unpaid.
- (d) The company has a trading liability with one overseas company to the tune of taka 1,50,000 which has been totally waived by the overseas company under special agreement during this year.
- (e) During the year, the company sold one equipment for taka 1,80,000 which was purchased at a total cost of taka 1,30,000 and had a written down value of taka 90,000 on the date of sale. The company reports taka 90,000 as gain on sale of equipment in the credit side of profit and loss account.
- (f) Due to a sudden fire on the factory building, the extended portion of the building is totally destroyed and compensation received from the insurance company total taka 2,50,000. In addition, the company realized an additional sum of taka 30,000 by selling the scrap. The extension of the building was constructed at a total cost of taka 4,00,000 and depreciation charged to date amounts to taka 50,000.
- (g) The company sold a scientific apparatus used for scientific research for taka 80,000 which was originally purchased at taka 1,50,000 and fully depreciated. The sale proceed is not recorded at all.
- (h) The company had export quota for exporting garments to EU countries. As the company has recently changed the line of operation (switched from garments manufacturing to pharmaceuticals), it transferred the export quota to another garments manufacturer for a sum of taka 70,000. This income is not reported at all.
- (i) The company is entitled initial depreciation taka 5,00,000 for new machinery installed and run commercial production during the year but they did not claim any initial depreciation.
- (j) Incentive bonus paid to the field representatives at the rate of 4 month's pay taka 3,00,000. But the general practice of giving incentive bonus for the similar business is two month's pay.
- (k) Sum of taka 1,20,000 donated to an institution for scientific research which is not approved by NBR.
- (l) Sum of taka 5,00,000 expended for establishing a hospital for the benefit of employees. The health benefit was provided by the company without taking any charge from the employees.
- (m) Salary of taka 5,00,000 and rent of taka 80,000 were paid without deducting tax at source.
- (n) Payment of brokerage and commission of taka 60,000 made to a non-resident without deducting tax at source.
- (o) Annual perquisites enjoyed by MD, Chairman and 5 members of Board of Directors amounted to taka 43,00,000.
- (p) Normal accounting depreciation charged taka 2,50,000 but tax depreciation amounts to taka 3,00,000 excluding the amount of initial depreciation on machinery.
- (q) Value of the free sample distributed claimed taka 2,00,000. Annual turnover during the year was taka 80,00,000.

- (r) Expenditure on foreign travels for holidaying and recreation of one employee claimed Tk.4,00,000. His basic salary is Tk.1,20,000 and that the travel was not oftener than once in two years.
- (s) Sum of taka 50,000 expended to train employees (Bangladeshi citizen) in connection with a scheme approved by the Board.
- (t) The company expended a sum of taka 2,00,000 for visits abroad as a member of trade delegation sponsored by the government.
- (u) Annual membership fee of taka 1,50,000 is paid to Bangladesh Pharmaceutical Society which is a professional body recognized by the Board.
- (v) Expenditure on publicity and advertisement during the year taka 3,00,000.
- (w) Entertainment claimed taka 1,50,000.

Required: Compute the total income of the company for the assessment year 2018-19.

Solution 2:

Care Pharmaceuticals

Status: Resident Company

Income year: 2017-18 [Assessment year: 2018-19]

Particulars	Taka	Taka
Income from business or profession:		
Net profit as per Profit & Loss Account		20,00,000
Add: <u>Inadmissible expenses</u>		
Excess bonus paid to field representatives [note-9]	1,00,000	
Payment for scientific research not approved by NBR	1,20,000	
Salary and rent paid without TDS	5,80,000	
Payment to non-resident without TDS	60,000	
Excess perquisites [note-11]	4,50,000	
Accounting depreciation for separate consideration	2,50,000	
Excess amount of free sample ceiling [note-12]	40,000	
Excess holidaying and recreation [note-13]	1,00,000	17,00,000
		37,00,000
Less: <u>Expenses admissible</u>		
Initial depreciation on machinery (1 st year)	5,00,000	
Tax depreciation (normal)	3,00,000	8,70,000
Loss on fire[3,50,000-2,80,000] [note-6]	70,000	
		28,30,000
Add: <u>Income not credited to P/L Account</u>		
Bad debt recovered [note-2]	20,000	
BDBL interest due but not paid within 3 years [note-3]	80,000	
Waiver of a trading liability [note-4]	1,50,000	
Sale proceeds of scientific apparatus [note-7]	80,000	
Income from transferring export quota [note-8]	70,000	4,00,000
Add: Revenue profit on sale of equipment	40,000	32,30,000
		40,000
		32,70,000
Less: Income received from non-business heads		
Gain on sale of equipment[note-5]	90,000	90,000
Adjusted net profit		31,80,000
Add: Entertainment to be considered separately		1,50,000
		33,30,000
Less: Admissible entertainment [note-14]		86,600
Taxable income under the head business		32,43,400

Non-business income: Capital gain	50,000
Total income	<u>32,93,400</u>

Notes:

1. Loss on sale of supplies is an allowable deduction as such supplies does not fall under capital asset as per the definition given in sec 2(15).
2. Amount of bad debt recovered will be treated as the current year's income and should be credited to the profit and loss account, as because bad debt was allowed earlier.
3. As the interest due to Bangladesh Development Bank Ltd. is not paid within 3 years, such interest will be deemed to be current year's income u/s –19(15)(aa).
4. As the company received waiver of a trading liability during this year, it should be treated as income u/s – 19(15)(b).
5. Computation of total gain, Capital Gain and Revenue Gain from the sale of equipment:

Particulars	Taka	Taka
1. Sale proceeds	1,80,000	
2. Initial costs	1,30,000	
3. Capital gain (1-2)		50,000
4. Written down value (cost less depreciation)	90,000	
5. Revenue gain(2-4)		40,000
6. Gain on sale of equipment as shown in P/L Account (1-4)		90,000

6. As the insurance compensation received taka 2,50,000 plus scrap value Tk.30,000 is less than the amount of written down value of the building taka 3,50,000, the difference Tk.70,000 will be deducted from business income as per provision of Para 10(c) of 3rd schedule.
7. Sale proceeds of the asset used for scientific research shall be the deemed income in the year of sale under section 19(20).
8. As export value is not given in the question, so 3% of export value is not possible to be taken as income as per Rule-30A. There is no way to take different amount as income other than income shown by the company and that's why shown income is accepted.
9. After allowing 10% of disclosed net profit Tk. 2,00,000, the rest Tk.1,00,000 disallowed as excess incentive bonus as per section 30(j)
10. The amount expended for hospital is allowable deduction as it charges nothing against services from the employees.
11. Allowable amount of perquisites to MD, Chairman and 5 Directors will be taka 38,50,000 (taka 5,50,000 × 7). Thus, excess amount of perquisite is taka 4,50,000 (taka 43,00,000 – taka 38,50,000) that is not allowed.
12. The allowable rate of free sample for a pharmaceutical industry is 2% for annual turnover up to taka 5 crore. The turnover of the company were taka 80,00,000 and free sample allowed is taka 1,60,000 (2% of taka 80,00,000). Thus, excess amount was taka 40,000 (taka 2,00,000 – taka 1,60,000) that is disallowed.
13. Employee's three (3) month's basic salary Tk. 3,60,000
3/4th of actual expenditure (3/4th of 4,00,000) 3,00,000
Excess amount paid [Tk.4,00,000-Tk.3,00,000] is to be disallowed 1,00,000

14: Amount of admissible entertainment allowance:

On the first taka 10,00,000	@ 4%	Tk. 40,000
On the balance taka 23,30,000	@ 2%	Tk. 46,600
On total income of taka 33,30,000		Tk. 86,600

Worked example 3

The profit and loss account of Star Ltd. is given below for the income year 2017-18.

Star Ltd.
Profit and Loss Account
For the year ended on June 30, 2018

Particulars	Tk.	Particulars	Tk.
Cost of goods sold	1,500,000	Sales	3,500,000
Salaries	700,000	Dividend	120,000
Rent	150,000	Interest	30,000
Advertisement	200,000	Gain on sale of Asset	40,000
Interest on Loan	80,000	Interest on Tax-Free Securities	15,000
Utility Expenses	60,000	Interest on Foreign Investment	20,000
Donation	150,000		
Transportation	110,000		
Audit Fee	200,000		
Bad Debt	90,000		
Contribution to RPF	70,000		
Income Tax paid in Advance	30,000		
Fines paid to Customs	20,000		
Annual Membership	15,000		
Legal Expenses	25,000		
Insurance Premium	35,000		
Sundry Expenses	12,000		
Depreciation	65,000		
Net Profit	2,13,000		
Total	37,25,000	Total	37,25,000

Determine the taxable income of the company and net tax liability thereof. Consider the given data below and assume that:

Star Ltd. is a listed Public Limited Company. Salaries are paid in cash without any cheque or bank transfer. Tk.4,50,000 of salaries from Tk.7,00,000 falls under the category of gross salary more than Tk.15,000; tax depreciation amounts to Tk.50,000; legal expenses are paid due to the infringement of trademarks and the company has sold an asset for Tk.1,00,000 that the company has purchased 4 years back at a cost of Tk.80,000 with a written down value of Tk.60,000 till date.

Solution:

Star Ltd. [Status: Resident Company]
Income year: 2017-18 [Assessment Year: 2018-19]

	Taka	Taka
Income from Business or profession:		
Net Profit as per Profit and Loss Account		2,13,000
Less: Non-business income for consideration at respective head:		
Dividend	1,20,000	
Interest	30,000	
Interest on tax-free securities	15,000	
Interest on foreign investment	20,000	
Capital gain on sale of asset (1,00,000-80,000)]	20,000	
		<u>2,05,000</u>
		8,000

Add: Inadmissible Expenses		
Salaries (for violation of section 30(i))	4,50,000	
Donation (assuming donation to unapproved institution and condition to get CSR also not fulfilled)	1,50,000	
Income Tax (as income tax is not an expense)	30,000	
Fine (inadmissible expense due to violation of law)	20,000	
Legal expense (due to infringement of other's trademark)	25,000	
Accounting Depreciation	<u>65,000</u>	<u>7,40,000</u>
		<u>7,48,000</u>
Less: Tax Depreciation as per 3 rd schedule		<u>50,000</u>
		6,98,000
<u>Income from business</u>		
		20,000
<u>Capital Gain</u>		
<u>Income from other sources:</u>		
Dividend	1,20,000	
Less: Tax free as per 6 th Schedule (Part-A) Para-11A [Applicable for company assessee also]	<u>25,000</u>	
	95,000	
Interest	30,000	
Interest on foreign investment	<u>20,000</u>	<u>1,45,000</u>
		8,63,000

Total Income

Tax calculation:

Tax on total income excluding dividend & capital gain (25% of Tk. 7,48,000)	Tk. 1,87,000
Tax on dividend (20% of Taka 95,000)	19,000
Tax on capital gain (15% of Tk.20,000)	3,000
Gross Tax Liability	2,09,000
Less: Advance tax paid	<u>30,000</u>
Tax Liability	<u>1,79,000</u>
Less: TDS on dividend (1,20,000x20%)	<u>24,000</u>
	<u>1,55,000</u>
Less: TDS on bank interest (30,000x10%)	<u>3,000</u>
Net tax liability	<u>1,52,000</u>

OR

Minimum tax on gross receipt @0.60%

On sales Tk.35,00,000 @0.60%=	21,000
On receipts from sale of assets Tk.1,00,000@0.60%=600x15/35=	360
On dividend receipts Tk.1,20,000@0.60%= 720x20/35=	411
On interest receipts Tk. 50,000x60%=	300
Total	Tk.22,071
Whichever is higher. So tax to be paid	Tk.1,52,000

Note: (1) Due to lack of information foreign tax credit as per section 144 or 145 is not possible to allow on interest on foreign investment

Worked example 4

XYZ Pharmaceuticals Limited, a pharmaceutical manufacturing company, commenced its operations in 2012. The audited profit & loss statement of the company for the year ended 30 June,2018 is as follows:

Particulars	Taka ('000)
Net sales	12,000
Cost of Sales	(10,200)
Gross Profit	1,800
Other Operating Income	1,600
Administrative Expenses	(14,500)
Selling and Marketing Expenses	(74,500)
Other Operating Expenses	(1,000)
Profit from Operations	(86,600)
Financial Expenses	(25,000)
Foreign exchange gain/ (loss)	(2,200)
Interest income	12
Profit/ (Loss) before Tax	(113,788)

Other information:

- Depreciation booked in the accounts during the year Tk. 30 million. As per tax law depreciation for the year would be Tk. 50 million.
- Royalty charged to expense during the year was Tk. 9.60 million (8% of net sales).
- Expense incurred for samples distributed was Tk. 5 million.
- Of the total employees of the company 10 employees' salaries include perquisites on an average Tk. 600,000 each, 10 employees' salaries include perquisites on an average Tk. 400,000. No other employee's salaries have perquisites more than Tk. 550,000.
- Provision for gratuity made during the year was Tk. 1,000,000, whereas gratuity paid during the year was Tk. 900,000.
- The company contributed to the employees' provident fund during the year Tk. 1,500,000. The provident fund is duly recognized by concerned Commissioner of Taxes.
- There was entertainment expense of Tk. 250,000 during the year.
- Financial expense includes Tk. 2 million for the interest paid on the foreign loan received from its overseas parent company. The rate of interest is LIBOR+4.50. The transfer pricing officers of NBR have assessed that the arm's length rate of interest of the similar loan should LIBOR+3.0 [Assume the LIBOR rate was 0.50]

Required:

- Compute the total income of the company.
- Compute the net tax liability of the company for the year (refer section 82C(4), if applicable).

Solution:

- Computation of total income of XYZ Pharmaceuticals Ltd. for the assessment year 2018-19:

	Taka ('000)	Taka ('000)
Net profit (loss) before tax as per accounts		(113,788)
Add:		
Accounting depreciation	30,000	
Royalty expenses as per accounts	9,600	
Samples as per accounts	5,000	
Excess perquisites (600000-550,000) X 10	500	
Provision for gratuity made during the year	1,000	
Entertainment expenses as per accounts	250	
Interest on foreign loan as per accounts	<u>2,000</u>	
		48,350

Less:		
Tax depreciation	50,000	
Samples expenses (Note-1)	1,600	
Gratuity paid during the year	900	
Interest on foreign loan (2000/5% X 3.5%)	1,400	
Entertainment expenses (Note 2)	Nil	
Royalty expenses (Note-3)	Nil	
		(53,900)
Total income		(108,238)

Notes:

- 2% on 5 crore, 1% on next 5 crore and 0.5% on balance Tk. 2 crore of turnover (Rule 65c)
- As there no taxable profit before entertainment allowance, no entertainment will be allowed (Rule 65)
- Royalty is allowed up to 8% of disclosed net profit. As disclosed net profit is negative so no royalty is allowed (Sec 30h).

ii. Net tax liability of the company

Higher of the following:

Tax on calculated loss

Nil

Tax on gross receipts as per sec 82C(4) (12 Crore X 0.60%)

Tk. 720,000

Therefore, the net tax liability of the company for the AY 2018-19 will be Tk. 720,000

Assessment of banks

According to Income Tax Ordinance, 1984, banks may have earnings from two different sources:

- Income from banking business;
- Interest on securities.

To assess income of a bank, some special points are required to be considered carefully.

1. Provision for bad and doubtful debt is no more allowable expenditure.

2. Excess profit tax which was applicable on banking business has been withdrawn with effect from the assessment year 2016-17.

3. In case of foreign bank, head office expenditure to the extent of 10% of disclosed net profit is allowable expenditure u/s 30(g)

4. Tax rate of local Bank is 37.5% and foreign bank is 40%.

Worked example 5

From the following profit & loss account of Oman Bank Ltd., a non-resident bank, for the year ended on 31/12/2017, compute total income and tax liability

Salaries and allowances -	20,00,000/-	Interest and commission-	1,20,00,000/-
Interest on deposit-	40,00,000/-	Gain from sale of old car-	10,00,000/-
Car maintenance	5,00,000/-		
Head office exp. (as per allocation by head office).-	3,00,000/-		
Bad debt-	6,00,000/-		
Provision for bad debt-	4,00,000/-		
Audit fee -	2,00,000/-		
Depreciation -	15,00,000/-		
Technical fee -	1,00,000/-		
Scholarship to poor students-	8,00,000/-		

Special reserve-	2,00,000/-		
Advertisement -	7,00,000/-		
Entertainment -	8,00,000/-		
Travelling:-			
(a) within the country –	50,000/-		
(b) outside the country (including head office tour)	4,50,000/-		
-			
Net profit-	4,00,000/-		
	1,30,00,000/-		1,30,00,000/-

Additional information:

- (1) Salaries and allowances include incentive bonus to employees TK. 3,00,000/-
- (2) Tax at source was not deducted from car workshop bill of TK. 2,00,000/-
- (3) Provision for bad debt is within 1% of classified loan.
- (4) Tax depreciation as per tax law is TK. 10,00,000/-
- (5) Advertisement bill paid to advertisement agency for periodic advertisement to private TV channel. No VAT was deducted therefrom though tax at source was deducted properly.
- (6) The sold car was purchased 5 years ago at Tk.50,00,000/ and its book value was Tk.25,00,000 at the time of sale at Tk.35,00,000/.

Solution 5:

Oman Bank
Computation of total income
For the year ended on 31st Dec.2017
(Assessment year: 2018-19)

A. Income from business:

Net profit as per Profit and Loss a/c: -	Tk. 4.00.000/-
Less: Capital gain from sale of car (For consideration at appropriate head of Income)	Tk.10.00.000/-
Shown business loss: -	Tk.6,00,000/-

Less: - Disallowances of expenditure for separate consideration:

(1) Depreciation –(for consideration as per 3 rd Schedule) –	15,00,000/
(2) Entertainment –(for consideration as per Rule-65) –	8,00,000/
(3) Head office exp.–(allowable up to 10% of disclosed net profit)–	2,60,000/
(4) Technical fee –(allowable up to 8% of disclosed net profit) –	68,000/
(5) Overseas travelling –(for consideration as per 30(k)) –	4,50,000/
(6) Incentive bonus –(for consideration as per 30(j)) –	3,00,000/
	<u>33,78,000/</u>
	Income:-Tk.27,78,000/

Add: - Inadmissible expenditure:

(1) Car workshop bill payment Tk. 2,00,000

Out of total car maintenance of Tk.5,00,000, car workshop bill payment was Tk. 2,00,000 where from no tax at source was deducted. The Items from where tax is to be deducted car workshop bill payment is one of them. So for non-deduction of tax at source, car workshop bill payment is disallowed as per provision of section 30(aa) of ITO, 1984- **2,00,000/-**

(2) Provision for bad debt Tk. 4,00,000/-

Provision for bad debt was allowable expenditure for banking companies up to assessment year 2006-07. As there is no such provision for the year under consideration, so disallowed fully- 4,00,000/-

(3) Scholarship to poor students Tk. 8,00,000

As it is not business related expenditure so disallowed fully. 10% rebate facility is applicable in case of CSR if it is disbursed through Govt. approved educational institution and also after fulfillment of other conditions. As there is no such information in the question so the bank will not be entitled to get 10% rebate facility 8,00,000/-

(4) Special reserve: - Tk. 2,00,000

Reserve is not an item of P & L. Moreover there is no information about the nature of such reserve and whether it is Govt. approved or not. So disallowed fully as section 29(1) (V) is not complied with- 2,00,000/-

(5) Advertisement Tk. 7,00,000

Expenditure will no more be disallowed for non-deducting VAT at source with effect from the assessment year 2016-2017. As tax at source was deducted properly so nothing will be added back as per section 30(aa). ----- Nil

Less:

(1) Tax depreciation (as per 3 rd schedule) -----	10,00,000/-
(2) Incentive bonus (as per section 30 (j))	40,000/-
(3) Overseas travelling 1.25% of disclosed turnover 1,20,00,000 1% =	1,50,000/-
	<u>11,90,000</u>
Income base on which entertainment will be allowed	31,88,000

Less: Allowable exp. as per section 30

(1) Entertainment (as per rule -65)	
on 1 st the 10,00,000@ 4% + 40,000	
on balance the 21,88,000@ 2% + 43,760/-	
	<u>83,760</u>
Income from business-----	31,04,240

B. Capital gain:

Capital gain from sale of car shown Tk. 10,00,000/-

As there is no information regarding the WDV, purchase price, sales price etc. gain as per tax law is not possible to calculate. So I assume that the car purchased and sold in the same year so that there is no question of depreciation, and if that is no depreciation then there is no question of revenue gain from sale of car in addition to capital gain.

Thus the capital gain shown by the bank is accepted----- 10,00,000

Total income 41,73,640

The calculation

on Tk31,04,240 Tax @ 40%[being foreign bank]-----	12,41,696/-
on Tk.10,00,000 tax @ 15% -----	1,50,000/-
Tax liability-----	<u>13,91,696/-</u>

Assessment of leasing companies

A lease is an arrangement whereby the lessor confers the right to use an asset in return for a payment or series of payments. In a lease transaction legal ownership of the leased assets rests with the lessor through in substance the lessee is the owner for the purposes.

Basically there are two types of lease (i) finance lease (ii) operating lease.

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. All other leases are classified as operating leases.

Lessee under a finance lease is the owner of the asset for all practical purposes excepting that in legal form he is not the owner until the asset is finally transferred to him at the end of the lease period. Operating leases are just like hire purchase transactions and the lessee is the owner in no sense of the term, legal or economic.

Some specific provisions usable for leasing companies:

- (i) In case of financial lease, lessor would not be entitled any depreciation allowance as per provision of 3rd schedule (Para-3(4)). But in case of operating lease leasing company (lessor) will get depreciation allowance.
- (ii) Section 2(30) (b) defines 'fair value of assets' leased by leasing companies or financial institution. The residual value of leased asset on termination or maturity of lease agreement, plus the rental realized during the lease period shall not be less than the cost of acquisition. In other words, no capital loss or balancing allowance in the case of leased assets is allowed.
- (iii) Under section 29(1)(v), transfer to a special reserve not exceeding 5% of the total income until the reserve fund equals the paid up capital of the financial institution is an admissible deduction.

Worked example 6:

Prime Leasing is a public limited company listed with Dhaka Stock Exchange. It has recently submitted its income tax return for the accounting year ending on 31 December, 2017 showing a net profit before tax of Tk. 11,37,25,000.

Further examination of the file, records and documents revealed the following:

- (a) Depreciation on leased assets charged in the accounts of Tk. 3,80,50,000 and loss on disposal of leased assets was Tk. 29,88,000 this arose out of the shortage of residual value of returned or repossessed assets plus rentals received on the lease of these assets over the original cost of the assets.
- (b) Provision for used assets and term finance has been made in the accounts at Tk. 51,35,500 and Tk. 19,13,900 respectively. This has been provided in accordance with FID Circular No. 8 issued by the Bangladesh Bank.
- (c) Tax depreciation for the relevant year is 5,85,00,000.
- (d) Balances of statutory reserve and paid up share capital on 1.1.2013 were Tk. 1,86,00,000 and Tk. 12,00,00,000 respectively.
- (e) Excess perquisites amounted to Tk. 6,95,000 and legal expenses included Tk. 80,000 for professional fees for the acquisition of company's new office at Dhanmondi.
- (f) Net profit included dividend received on investments of Tk. 19,98,000.

You are required to compute the (a) total income and (b) tax liability of the company for the relevant assessment year.

Solution 6

Prime Leasing
Assessment year: 2018-2019
Computation of total income and tax liability

Particulars	Amount (Tk.)	Amount (Tk.)
Net income		11,37,25,000
Less: Dividend income (to be considered separately)		<u>19,98,000</u>
		11,17,27,000
Add: Inadmissible expenses		
Accounting depreciation on leased assets	3,80,50,000	
Disallowed loss on disposal of leased assets	29,88,000	
Provision for used assets	51,35,500	
Provision for term finance	19,13,900	
Excess perquisites	6,95,000	
Legal fee for capital asset	<u>80,000</u>	
		<u>4,88,62,400</u>
		6,28,64,600
		<u>5,85,00,000</u>
Less: Tax depreciation		
Business income		43,64,600
Income from dividend		<u>19,98,000</u>
Total income		<u>63,62,600</u>

Tax liability computation

Tax on dividend income	19,98,000	@ 20%	3,99,600
Tax on balance income	<u>43,64,600</u>	@ 40%	<u>16,36,725</u>
	63,62,600		<u>20,36,325</u>

Notes:

1. Loss on disposal of leased assets is not allowable.
2. No provision for bad or doubtful lease or finance is allowed.
3. Tax rate on dividend income is 20%.

Assessment of insurance companies

It is a common knowledge that the true profit of life insurance business cannot correctly be determined under the ordinary method of accounting. Hence the Ordinance has provided for a special method of computing the profits of a company doing insurance business. By virtue of section 28(2) (a), the assessment of insurance company is completely governed by the rules contained in the Fourth Schedule of the Ordinance. Therefore, the following provisions are implicitly excluded while computing the profits of an insurance company:

- a. Sections 22 and 23 relating to the computing of income chargeable under the head "interest on securities".
- b. Sections 24 and 25 relating to the computation of income chargeable under the head "income from house property".
- c. Sections 28, 29 and 30 relating to the computation of profits and gains from business or profession.
- d. Sections 31 and 32 relating to the computation of income chargeable under the head "capital gains".
- e. Section 33 and 34 relating to the computation of income under the head "income from other sources".
- f. Section 62 relating to the giving of credit of tax deducted at source.

Thus the profits and gains of insurance business from all sources are to be computed artificially under one income in accordance with the provisions in the Fourth Schedule and not under different heads of income.

In the Schedule assessment of insurance business has been discussed under 3 different heads:

- Para 2 :Computation of profits and gains of life insurance business
- Para 6 :Computation of profits and gains of other insurance business
- Para 7 :Profits and gains of non-resident person

Assessment of life insurance business:

The profits and gains of life insurance business are to be taken as the greater of the following:

- (a) Net external incomes i.e. gross external incomes of the income year from that business less the management expenses of that year;
- (b) Annual average surplus, i.e. the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation in respect of the last inter valuation period ending before the commencement of the assessment year subject to the following exclusions.
 - (i) any surplus or deficit included therein which was made in any earlier inter valuation period and
 - (ii) any expenditure or allowance which is not deductible under the provisions of sections 29 and 30 in computing income chargeable under the head 'Income from business or profession'.

Thus the assessable profits under the first method would vary from year to year. The annual average actuarial surplus under the second method would be constant during the particular inter valuation period.

Gross external incomes:

The expression 'gross external incomes' is defined in Para 9 of the Schedule as meaning the full amount of incomes from interest, dividends, fines and fees and all other incomes from whatever source derived including profits from revisions and on the sale or granting of annuities but excluding the following:

- (a) premium received on policy;
- (b) interest and dividends in any annuity funds; and
- (c) profits on the realization of investments

Management expenses:

The expression "management expenses" has been defined in Para 9 of the Schedule as meaning the full amount of the expenses including commissions, incurred exclusively for the purpose of life insurance business plus a fair proportion of the expenses incurred in the general management of the whole business. The following expenses are excluded from the above definition:

- (a) bonuses or other sums paid to or reserved on behalf of policyholders
- (b) depreciation of and losses on the realization of investments and
- (c) any other expenditure or allowance other than those allowed U/S 29.

However, the maximum limit of such management expense is prescribed in Para 2:

(a) 7.5 percent of the premium on single premium life insurance policies,	Plus
(b) 7.5 percent of the first year's premiums on policies under which less than 12 annual premiums are payable,	Plus
(c) 90 percent of the first year's premium in respect of all other life insurance policies,	Plus
(d) 12 percent of all renewal premiums received during the income year.	

Annual average surplus:

The other alternative method of computing profits of a life insurance business is based on annual average surplus determined by the actuarial valuation. Subject to certain adjustments the actuarial valuation forms the basis of computation of profits or gains.

(a) Amount paid to or reserved for or expended on behalf of the policyholders:

The first adjustment to be made to the surplus is to allow 75% of the amounts paid to or reserved for or expended on behalf of policyholders as a deduction there from. If the amount so kept for policyholders which was allowed as a deduction in the past is not actually so paid, the amount so allowed in the past will be added back to the profits for the period in which the amount ceases to be so reserved.

(b) Appreciation or depreciation of investments:

Any amount either written off or reserved by the insurance company in the accounts or through the actuarial valuation balance to meet depreciation or loss on the realization of investments should be allowed if the same is wiped out by a rise in a subsequent year either within or after the same inter-valuation period.

(c) Interest on tax free Government securities

Interest received in respect of any securities of the Government which have been issued with the condition that interest thereon shall not be liable to tax.

Credit for tax deducted at source:

Where for any year an assessment of the profits and gains of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding 12 months, then in computing the tax payable for that year, credit for tax deducted at source shall not be given u/s 62 for the tax paid in the income year, but credit shall be given for the annual average of the tax paid from interest on securities or otherwise during such period.

Worked example 7

According to the last actuarial valuation at 31 December 2017, the Pioneer Life Insurance Co. Ltd. had a surplus of Tk. 10,00,000. There was a deficit of Tk. 3,00,000 in the preceding actuarial valuation. 60% of the surplus was reserved for bonus to the policyholders. The company had the following income in the income year 2017:

1. Premium Tk. 20,00,000
2. Interest on tax free government securities Tk. 1,00,000
3. Dividends Tk. 1,50,000
4. Fines and fees Tk. 80,000
5. Profits on sale of shares Tk. 90,000
6. Profits on granting annuities and reversion Tk. 1,50,000

Management expenses claimed and admitted by the DCT are Tk. 2,50,000. During the undervaluation period, the company paid income tax at source of Tk. 3,00,000. Some of the share investments have depreciated in value during the year by Tk. 60,000. Determine the income of life insurance business of the company for the income year 2017.

Solution 7

Pioneer Life Insurance Co. Ltd.

Assessment year: 2018-19

	Amount (Tk.)
Actuarial surplus:	
Surplus as per 2017 valuation	10,00,000
Add: Deficit on earlier valuation	<u>3,00,000</u>
	13,00,000
Add: Income tax deducted at source	<u>3,00,000</u>
	16,00,000
Less: Reserve for bonus (75% x 10,00,000 x 60%)	<u>4,50,000</u>
Adjusted surplus	<u>11,50,000</u>
Annual average surplus	2,30,000
Add: Profit on sale of shares	<u>90,000</u>
	3,20,000
Less: Depreciation of share investment	<u>60,000</u>
Adjusted annual average	<u>2,60,000</u>
Gross external earnings	
Interest on securities	1,00,000
Dividends	1,50,000
Fines and fees	80,000
Profit on annuities and reversions	<u>1,50,000</u>
	4,80,000
Less: Management expenses	<u>2,50,000</u>
Net external earnings	<u>2,30,000</u>

For income tax purpose for the assessment year 2018-19, adjusted annual average of Tk. 2,60,000 being higher of the two would be the assessed amount.

Assessment of General Insurance Company

- (1) Forth Schedule governs the computation of income of insurance business both life and general.
- (2) Admissibility of business expenditure under section 29 and inadmissibility/ceiling of admissibility under section 30 apply in general insurance business too.
- (3) Para 6(2) of Forth Schedule permits a general insurance company to transfer 10% of the net premium income of that year to a fund created to meet exceptional losses and such transfer is an admissible deduction.
- (4) Para 6(3) of Forth Schedule sets the mechanism for the upper limit of the fund which is, the amount of the fund should be equal to the premium income of the year or average premium of the immediate 3 years preceding whichever is higher.

Worked example 8

Following is the profit and loss account of Sonar Bangla Insurance Co. Ltd. for the year 31 December 2017:

	Amount		Amount
Directors' fee	48,000	Interest, dividend, rent	1,97,26,029
Audit fees	1,35,000	Profit transferred from other revenue accounts	1,72,73,952
Registration, renewal etc.	2,05,331	Other Income	9,832
Advertisement	32,40,251		
Depreciation	7,92,127		
Interest on overdraft	1,81,198		
Balance transferred to Appropriation Account	3,23,57,906		
	<u>3,70,09,813</u>		<u>3,70,09,813</u>

Further scrutiny of the relevant papers, files and documents revealed the following:

- (1) Gross premium received during the year was Tk. 12,56,07,426 and in three years immediately preceding were Tk. 13,12,12,308, Tk. 13,68,87,085 and Tk. 13,55,80,109 respectively.
- (2) Net premium income of the year was Tk. 64441296 and the balance brought forward on reserve for exceptional loss was Tk. 10,19,45,720.
- (3) Accounting depreciation has been Tk. 7,92,127 whereas as per tax law this has been computed as Tk. 9,19,029.
- (4) Gratuity provided in the accounts was for Tk. 7,79,845 and paid actually Tk. 6,25,860.
- (5) Analysis of the dividend, rent etc. revealed that an amount of Tk. 6488284 being interests on various bank deposits has been included therein.

Calculate the taxable profit and tax liability of the company for the relevant assessment year:

Solution 8

Sonar Bangla Insurance Co. Ltd. Assessment year: 2018-2019

Particulars	Amount (Tk.)	Amount (Tk.)
Net profit as per accounts		3,23,57,906
Less: Income for separate treatment		
Dividend	1,32,37,745	
Interest	<u>64,88,284</u>	<u>1,97,26,029</u>
		1,26,31,877
Add: Inadmissible deductions		
Accounting depreciation	7,92,127	
Gratuity provision	<u>7,79,845</u>	<u>15,72,022</u>
		1,42,03,899
Less: Tax depreciation	9,19,029	
Gratuity actually paid	6,25,860	
Reserve for exception losses	<u>64,44,130</u>	<u>79,89,019</u>
		62,14,880
Business income		1,32,37,745
Dividend income		<u>64,88,284</u>
Income from other source-interest etc.		<u>2,59,40,909</u>
Total income		

Computation of tax liability

Tax on dividend income	1,32,37,745	@ 20%	26,47,549
Tax on business income	62,14,880	@ 37.5%	23,30,580
Tax on other income	<u>64,88,284</u>	@ 37.5%	<u>24,33,107</u>
Total tax liability			<u>74,11,236</u>

Notes:

- (1) Dividend received by a company assessee is taxable @20%
- (2) Gratuity actually paid is allowed.
- (3) Reserve for exceptional losses:-

	Current year	Preceding three years		
		2016	2015	2014
Gross premium income	12,56,07,426	13,55,80,109	13,68,87,085	13,12,12,308
Average of 3 years		Tk. 13,45,59,834		

Since average of three years premium income is higher than the premium of Tk.12,56,07,426 (current year's gross premium), the reserve for exceptional losses can be built up to that amount.

Opening balance in exceptional loss reserve	TK. 10,19,45,720
Transfer admissible - 10% of net premium income of Tk. 6,44,41,296	<u>64,44,130</u>
Balance carried forward	<u>10,83,89,850</u>

Non-resident carrying insurance business in Bangladesh : (Para 7) the profits and gains of the branches in Bangladesh of a nonresident insurance company may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its premium income derived from Bangladesh bears to its total premium income. The total world income of nonresident life insurance companies whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these paragraphs for the computation of profits and gains of the life insurance business carried on in Bangladesh.

For example, ALICO Bangladesh Ltd. is incorporated in USA and it carries on insurance business in Bangladesh for several years through branches. For the year ended 31 March 2016 its audited world income has been taka 950 million against a total premium income for the same year of taka 3,250 million. In Bangladesh it earned premium income of taka 60 million. Therefore, profits earned in Bangladesh is computed as taka 17.54 million ($950/3250 \times 60$).

Worked example 9

ABC Ltd., a publicly traded company incorporated and operating in Bangladesh, is 70% Bangladeshi owned and is a manufacturer of refrigerators, freezers and air-conditioners under the brand name ABC which is registered as a trade mark in Bangladesh. The company is the owner of the brand. The profit and loss account for the year ended 31 December 2017 is as follows:

	Notes	Tk.'000	Tk.'000
Turnover			
		161,596	
Add: Interest income	(1)		<u>308</u>
		161,904	
Less: Cost of sales	(2)		<u>115,416</u>
		46,488	
Less:			
Salaries, wages, and bonuses	(3)	7,040	
Employees Provident fund	(4)	1,536	
Donation	(5)	20	
Advertising	(6)	7,398	
Rental of premises	(7)	1,858	
Travelling	(8)	1,500	
Foreign exchange loss	(9)	280	
Maintenance of plant and machinery	(10)	232	
Bad and doubtful debts	(11)	2,038	
Freight and insurance		3,044	
Depreciation		1,880	
Motor vehicles expenses			<u>582</u>
			<u>27,408</u>
Net profit before tax			<u>19,080</u>

Notes:

(1) Interest income is from a fixed deposit placed with a bank in Bangladesh. The interest was received during the year and has been grossed-up in the accounts. Interest income includes Tk.28,000 (gross) earned but received by ABC Ltd. after 31 December, 2017.

(2) Cost of sales is arrived at after crediting Tk.80,000 in respect of the cost of goods manufactured by the company, which were withdrawn from stock for use of fixed assets by the company. The normal selling price was Tk.120,000.

(3) Salaries, wages, and bonuses include basic salary of Tk.64,000 paid to CFO in cash for the month of January 2015, pension of Tk.20,000 and contribution to the Gratuity Fund (unapproved).

(4) The Employees Provident Fund contributions by the employer and employee each are @10% for staff and 12% for executives.

(5) Donation is in respect of contributions made to a fund-raising campaign organized by a distributor of the ABC brand of goods.

(6) Advertising:

Included is a sum of Tk.54,000 incurred on advertising the ABC brand of goods on the internet via a host website located in Dhaka. The goods are of export quality standard. No income tax and VAT were deducted from the payment, as the company was not sure about the requirements of such deduction.

(7) Rental of premises:

Included in the rental is a sum Tk.50,000 paid in respect of the early termination of the lease of a building which the company vacated in September 2017. The lease was to have run for another 5 years. The building was no longer suitable as a showroom for the company's goods due to the construction of a toll plaza.

(8) Travelling includes:

(i) Vacation airfare and hotel accommodation costing Tk.36,000 for important overseas customers.

(ii) Reimbursement to the directors of the company of salaries of Tk.200,000 and Employees Provident Fund contributions of Tk.25,000 in respect of drivers employed by the directors.

(9) The foreign exchange loss is in respect of the purchase of component parts for manufacture. The realized loss amounts to Tk.14,000 only.

(10) Maintenance of plant and machinery includes the installation cost of a machine amounting to Tk.34,000.

(11) Bad and doubtful debts comprise:

Bad debts recovered (238,000) Specific provision brought forward (1,902,000) General provision brought forward (2,410,000) Bad debts written off 240,000 Specific provision carried forward 2,750,000 General provision carried forward 3,598,000 2,038,000 The specific provision carried forward includes a sum of Tk.26,000, being the balance of a personal loan granted to a director who has now resigned from the Board.

(12) Depreciation allowances have been computed at Tk.1,644,000 for the assessment year 2018-19, but without taking into account the following acquisitions:

Machine:

On 14 August 2017 the company purchased a machine at a cost of Tk.366,000. The sum of Tk.34,000 mentioned in note (10) was incurred on preparing the site for installation of this machine. The machine commenced to be used for the business two weeks after acquisition.

Motor car: A new car costing Tk.4,400,000 was purchased on 9 July 2017 for the general manager.

(13) Dividend has been paid at the rate of 30% (20% cash, 10% bonus) for the year ended 31 December 2016.

(14) The company has a capital loss Tk.1,000,000 carried forward from the assessment years as follows:

2010-11 Tk.200,000
 2011-12 Tk.300,000
 2012-13 Tk. 400,000
 2013-14 Tk.100,000
 2014-15 Tk.1,000,000

The loss carried forward from the assessment years includes:

- (i) 2010-11: Tk.100,000 depreciation allowance.
- (ii) 2013-14: Tk.50,000 loss under the head "Capital gain".

All other losses carried forward relate to business income.

Requirements:

- a) Compute total income for the Income year ended 31 December 2017 corresponding to assessment year 2018-2019.
- b) Compute total tax liability for the year.

While making the above computations any non-compliance of the relevant provisions of the tax laws by the Company are to be considered strictly in accordance with the legal provisions for such non-compliance. If considered necessary, you may make assumptions in the light of the relevant tax provision.

Solution 9

ABC Ltd.

Accounting Year ended on 31 December 2017 [Assessment Year: 2018-19]

Particulars	Note	Taka '000	Taka '000
Net Profit before tax as per audited statement of accounts			19,080
Less: Income to be considered separately under appropriate head:			
Interest income			(308)
Net Profit from business as per audited statement of accounts			18,772
Add: Items of expenditure for separate consideration:			
Depreciation as per audited financial statements		1,880.00	
Foreign exchange loss		280.00	
Inadmissible expenses:			
Salary paid in cash		64	
Donation to unapproved sector		20	
Advertising expense paid without deduction of income tax		54	
Contributions to unrecognized provident fund	4	1,536	
Reimbursement of director's driver salary and provident fund		225	
Installation cost of plant and machinery (being capital nature)		34	
Provision for bad and doubtful debts	5	2,276	
			4,209
Bad debts recovered			25,141
Admissible income/(expenses):			238
Written off provision for doubtful debts		(240)	25,379
Realized foreign exchange loss		(14)	(254)

Income from business or profession before considering depreciation, unabsorbed business loss and unabsorbed tax depreciation loss			25,125
Tax depreciation for the Assessment Year 2016-17	6		(2,324)
Profit after depreciation			22,801
Set-off unabsorbed tax depreciation loss	7		(100)
Set-off unabsorbed business loss	8		(450)
Income from business or profession			22,251
Income from other sources			
Interest income			308
Total income			22,559
Income tax payable on total income @25%			5,639.75
Income tax deducted at source	10		(28.00)
Net tax payable			5,611.75

Notes:

- Taxable income and income tax payable thereon has been computed considering the provisions of the Finance Act 2018;
- It is assumed that no revenue is recognized for cost of goods transferred as fixed assets since there was no gross inflow of economic benefit.
- Pension is exempt from income tax in the hand of the recipient by paragraph 8 of the Sixth Schedule Part A of the ITO, 1984 and hence the provision of Section 30 (d) is not applicable here. Since Gratuity Fund is un-approved, contribution to such fund will be inadmissible. However, since the question does not mention about amount of contribution to such Fund, no amount has been disallowed here.
- It is assumed that the provident fund is not recognized by the Commissioner of Taxes
- Provision for bad and doubtful debts: Taka '000

Total provision brought forward (Tk. 1,902+ Tk. 2,410)	4,312
Provision written off during the year	(240)
Provision made during the year (balancing figure)	2,276
Total provision carried forward (Tk. 2,750+ Tk. 3,598)	6,348

6 Tax depreciation	Taka '000
Depreciation allowance computed	1,644
Normal depreciation on machinery (Tk. 366 + Tk. 34)×20%	80
Initial depreciation on machinery (Tk. 366 + Tk.34)×25%	100
*Normal depreciation on new car (Tk. 2,500)×20%	500
	2,324

* As per Para 11 (6) (a) of the Third schedule of the ITO 1984, the actual cost of the motor car, not plying for hire, shall not exceed Tk.25,00,000/ as per Finance Act,2015 and applicable from the assessment year 2016-17. As the purchase price of the motor car exceeds the said limit, depreciation has been calculated on deemed purchase price (i.e. twenty five lakh taka).

- As per Section 42 (6) of the ITO, 1984 unabsorbed depreciation loss can be carried forward for set off with business income for unlimited period of time;

8	Unabsorbed business loss:		
	Total Loss		1,000
	Depreciation allowance carried forward AY 2010-11		(100)
	Loss carried forward under the head "Capital Gain"		(50)
	Business loss not eligible for set-off u/s 38 (b) of the ITO, 1984:		
	For the AY 2010-11 (200-100)	(100)	
	For the AY 2011-12	(300)	(400)
			<u>450</u>
9	Income tax deducted at source:		Taka '000
	Gross interest income		308
	Accrued interest		(28)
	Realized interest income		<u>280</u>
	Income tax deducted at source @ 10%		<u>28</u>

Worked example 10

AR Ltd. (petitioner# 1) and BA Ltd. (petitioner# 2), being PLC (non-publicly traded), carrying on business as mobile phone operators, obtained court order for a horizontal amalgamation" **Exhibit 1** for further details on ownership structure and other briefs on scheme. As per approved amalgamation scheme, petitioner 2 (transferor, BA Ltd.) shall be amalgamated into petitioner# 1 (transferee, AR Ltd.) to enhance scale of operations and optimize resource utilization. Cut-off for both is Dec 31. Extracts:

AR Ltd.

Comprehensive Statement of Income For the year ended 31-12-2017

	<u>BDT (In '000)</u>
Revenue	51,000,000
Cost of revenue	(29,000,000)
Admin expense	(4,000,000)
S&D expense	(6,000,000)
Operating expense	<u>(4,000,000)</u>
Profit from Ops	8,000,000
Net finance expense	(100,000)
Non-ops income	<u>400,000</u>
Profit before tax	<u>8,300,000</u>

BA Ltd.

Comprehensive Statement of Income for the year ended 31-12-2017

	<u>BDT (In '000)</u>
Revenue	13,000,000
Depreciation (network)	(5,000,000)
Other Network Ops cost	<u>(10,000,000)</u>
Gross Profit/ (Loss)	<u>(2,000,000)</u>
Other Income, net	100,000
G&A expense	(2,000,000)
S&D expense	<u>(2,000,000)</u>
Operating profit/ (loss)	<u>(5,900,000)</u>
Finance income	50,000
Finance expense	(2,000,000)
Foreign exch. gain/ (loss)	<u>(300,000)</u>
Profit/ (Loss) before tax	<u>(8,150,000)</u>

Statement of Financial position (31-12-2017) reflect BA Ltd. (in 000) R/E (taka 60,000,000), equity (taka 14,000,000).

Further Findings from the records of the income year of AR LTD.:

- Operating expense includes Tk. 500,000 paid to a lawyer for services involved in acquisition of Khulna office.
- Representative of 2 shareholding companies (AR (Pvt.) Ltd. and DNT) visited Dhaka when the talk of merger was brewed. Company paid Tk. 2,500,000 to Radisson on a/c of visitors, charged to admin expense.
- Non-ops income includes amount after TDS Tk. 100,000 paid to a valuer for valuation of assets disposed.
- Admin expense includes taka 150,000 interest levied for late filing of tax return and non-payment of advance tax.
- Net finance expense includes taka 500,000 paid as interest on a/c of a deferred payment scheme for acquiring imported cellular equipment which are already received and installed.

- vi) Cost of revenue includes accrual taka 5,000,000 BTRC annual license fee, without TDS, payment due by Jan/2017.
- vii) Operating expense includes taka 150,000 paid to a stationery goods supplier, without TDS.
- viii) Operating expense includes Tk. 500,000 paid to a vendor without deducting/paying VAT thereon.
- ix) Company missed to write-off a loss of taka 500,000/= on capital assets sold during the income year. An amount of depreciation taka 300,000/= was charged in income year on the same capital asset sold.

Further findings from the records of the income year of BA Ltd.:

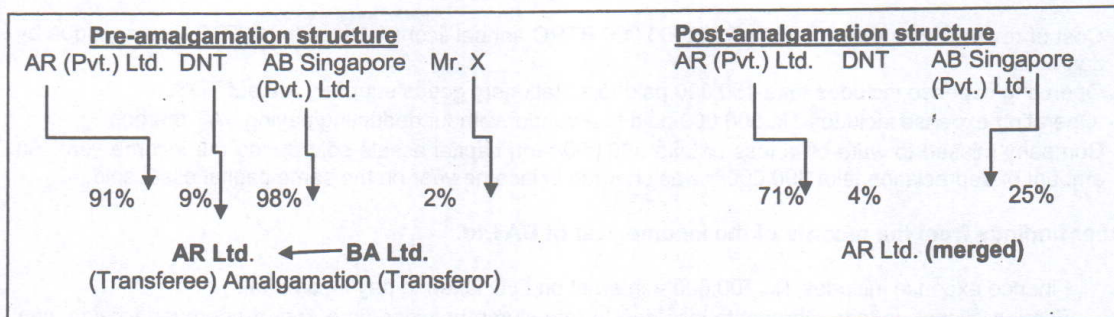
- i) Finance expense includes Tk. 700,000/= interest on O/D taken to pay income tax
- ii) Foreign exchange loss represents loss due to rate slump between time gap of approved foreign loan and receipt.
- iii) Company changed stock valuation method for mobile set stock. Auditor did not agree and qualified the report quantifying the resulting missed revenue Tk. 2,500,000.
- iv) Tk. 1,000,000 incurred for renovation of rented site offices in the country and charged to S&D expense.
- v) Included in G&A expense, fees Tk. 500,000 paid to auditor for valuation of fixed assets in connection with the preparation leading to primary meeting of the merger.
- vi) G&A expense includes taka 2,500,000 on a/c of transfer of overdue accumulated contribution to RPF (both employer and employee). Company could not transfer contribution timely for cash strain overriding the PF Rules.
- vii) Other network operating expense includes taka 500,000 forfeited advance paid for acquiring a new office floor.
- viii) Tk. 200,000 accrued as car rent from car rental company reported under S&D expense, without TDS.
- ix) During the income year, company disposed of a capital asset for taka 2,500,000. Carrying value and the tax WDV (@ 10%) of the asset at disposal were taka 1,000,000 and taka 800,000 respectively. A new asset was purchased for taka 5,000,000 to replace the old asset in the same year. Depreciation on new asset was provided wrongly at 20%.
- x) G&A expense includes taka 1,000,000 for directors traveling to Singapore on a new business negotiation, lump sum payment of taka 1,000,000 as inducement to hunt a prospective employee from a competitor.
- xi) Fees Tk. 500,000 paid to a lawyer to increase authorized capital before merger scheme.

Requirements:

- a) Calculate total income and tax payable of AR Ltd. for the income year ended 31.12.2017. Explanations/assumptions/relevant sections/case ref, if any, in support of your adjustments should be given.
- b) Calculate total income of BA Ltd. for income year ended 31.12.2017. Explanations/assumptions/relevant sections/case ref, if any, in support of your adjustments should be given.
- c) Consider relevant information above and in **Exhibit 2** relating to 'Slump Sale' of 'S' unit of BA Ltd. to MP Ltd. before the 'Effective Date' of amalgamation. Compute capital gain and tax liability on 'S' unit sales.
- d) Consider **Exhibit 1**. Write your views in the light of the I.T. Ordinance: (i) Whether difference shall attract tax if value of shares received from AR Ltd. by shareholders of BA Ltd. is more than the value of net assets of BA Ltd. amalgamated with AR Ltd. (ii) Whether AR Ltd. is entitled to carry forward losses/unabsorbed depreciation of BA Ltd. for set-off against taxable profit of the transferee after amalgamation.

EXHIBIT 1 (In connection with Question No. 1)

Court approved a scheme of amalgamation under Companies Act 1994 between AR Ltd. (Petitioner 1) and BA Ltd. (Petitioner 2). Currently, AR Ltd. (Petitioner 1) is owned by a Singapore-based company, AR (Pvt.) Ltd. (91%) and a Korean company, DNT (9%). BA Ltd. (Petitioner 2) is owned by AB Singapore (Pvt.) Ltd. (98%) and Mr. X of UK (2%). Petitioner 2 (transferor) shall be merged into Petitioner 1 (transferee). Pre-merger and post-merger ownership structure are as follows:



Relevant two extracts from approved Amalgamation Scheme:

- i) All Assets and liabilities of amalgamating company (Transferor) shall be vested on amalgamated company (Transferee). As part of capital reorganization, 1,300,000,000 Ordinary BDT 10 shares in transferee company shall be issued to shareholders of transferor; resulting 25% holding for transferor company's shareholders in transferee company's reorganized capital. Assume, shareholders of transferor company with >9/10th in value of shares in transferor company become shareholders of the amalgamated company. Difference of net assets of transferor company and value of agreed issue in transferee company to shareholders of the transferor company shall be transferred to Capital Reserve/Goodwill.
- ii) Transferee company shall be entitled to claim benefit of brought forward losses or/and unabsorbed depreciation, as admissible under the provisions of Income Tax Ordinance to the extent applicable, of the transferor company and to set off against the taxable profit of the transferee company after official amalgamation.

XHIBIT 2

SIM Kitting service unit 'S' of BA Ltd.:

BA Ltd. (transferor) has a small warehouse SIM kitting unit 'S' within its operation. Amalgamation deal agreed not to carry on such non-core operation with the merged entity and concluded that the deal steering committee would sell 'S' unit and the resulting tax, if any, shall be settled by transferee company. Within BA Ltd. Balance Sheet, assets and liabilities on a/c of 'S' unit are (BDT): Non-current liability 1,500,000, Fixed Assets 4,000,000 which includes 1,000 sq. ft. Warehouse land space bought for BDT 1,000,000 in January 2014 (revalued BDT 1,500,000 in Jan/2015), furniture & fixture net 300,000 (gross 500,000), electrical appliance net 320,000 (gross 400,000) and balance is other fixed assets WDV. Current assets: Inventory of SIM and kitting materials BDT 250,000, Bank balance (150,000). Merger steering committee has done a slump sale deal (lock, stock & barrel) with MP Ltd. to sell Unit 'S' operations of BA Ltd. in April 2017 (before 'Effective Date' of Amalgamation). Consideration is BDT 5,000,000/=. 'S' unit capital assets are depreciated u/s 29(1)(viii). Committee paid a lawyer net-of-tax fee BDT 50,000 for deal advice.

Solution 10(a)

Computation of total income and tax liability
AR Ltd.

Income year ended 31.12.2017. A/Y: 2018-19

	BDT ('000)	BDT ('000)
Net profit before tax		8,300,000
ADD: Inadmissible expenses:		
Lawyer payment for acquisition of Khulna office		
[Legal exp. is allowable exp. as per sec.29 of ITO, 1984]	----	
Payments to Radisson for Shareholders' reps		
[Allowable as the exp. is not personal, not capital rather related to business]	----	

Payment to valuer of assets disposal [Payments linked to capital assets sold]	100
Interest for late return filing and default in advance tax payment [Any exp. for violation of law is not allowable exp.]	150
Interest on assets acquired under deferred scheme [To be disallowed being capital exp.]	500
BTRC annual license fee [Cannot be disallowed on the ground that tax was not deducted as it would be deducted at the time of payment]	-----
Stationery purchase through supply [To be disallowed u/s 30(aa) for non TDS]	150
Vendor payment without VAT deduction [Not to be disallowed u/s 30(aa) for non VDS wef the AY: 16-17]	-----
Depreciation of sold assets [Depreciation not allowed in the year of disposal]	300
	1,200
	<u>8,301,200</u>

Note:

There is no scope to consider loss on sale of assets Tk. 500,000 due to lack of information relating to written down value and sales price of assets already sold.

Tax calculation

Tax @ 45% (non-listed mobile phone Operator Company) ==Tk.3,735,540 ('000)

Solution 10(b)

**Computation of total income and tax liability
BA Ltd
Income year ended 31.12.2017. A/Y: 2018-19**

Net profit before tax	BDT('000) (8,150,000)
ADD: Inadmissible expenses:	
Interest on O/D [In case of cash shortage, company can borrow money to run business including tax payment etc. As it is business related exp. so it is allowable. Tax is not allowable exp. but interest on loan to pay tax is allowable exp.]	-----
Exchange loss [Bonafide and actual and as such allowable u/s 29]	-----
Missed revenue for stock valuation method change [Assumed that stock valuation method has been changed & recognized as per BAS]	-----
Renovation of site office. [To be added as it is capital exp.]	1,000
Valuation fee paid to auditor in connection with merger [Not connected with day to day business of the company]	500

RPF overdue contribution payment -----
 [Action of overdue payment lies under separate PF Rules,
 Actual amount whenever paid is admissible]

Forfeited advance for cancellation of agreement 500
 [Not to be allowed as business exp. as it was incurred
 for violation of terms and conditions]

Car rent payment accrued -----
 [To be allowed as business exp. because tax to be deducted
 at the time of payment not on the basis of accrual]

Depreciation on new asset
 [Dep. Claimed Tk.50,00,000x20%=10,00,000.
 Assumed that purchased price of the old machine was
 Tk.20,00,000(as it was not given in the question).
 So actual tax dep. to be allowed
 (Tk.50,00,000-5,00,000=45,00,000x20%=9,00,000).
 So excess claim Tk.10,00,000-9,00,000=1,00,000 to be disallowed. 100

Inducement payment to hunt staff
 [Illegal exp. not allowable at legal business] 1,000
 3,100

Total Income

3,100
(8,153,100)

Solution 10(c)

Computation of Gain and Tax Liability on 'S' Unit Slump Sale to MP Ltd.

Sales proceeds 5,000,000

Less: Net worth of 'S' unit

Floor space value (ignoring revaluation) 1,000,000

WDV of other assets:

Furniture & Fixture (gross 500,000) 300,000

Electric appliance (gross 400,000) 320,000

Other fixed assets (40,00,000-15,00,000-3,00,000-3,20,000) 1,880,000

Inventory 250,000

Bank balance (150,000)

Value of total assets 3,600,000

Less: Liabilities

Liability of 'S' unit 1,500,000

Legal expense gross [50,000x100/90] 55,555

1,555,555

2,044,445

I think it is goodwill money not capital gain

(as because not only capital assets are sold here) which is taxable u/s

19(10) / 33 as income from other sources

2,955,555

Tax @ 35%

1,034,444

Solution 10(d)

Amalgamation of BA Ltd. with AR Ltd. under the approved scheme meets condition of amalgamation as per section 2(2) of IT Ordinance. Although all assets and liabilities of BA Ltd. get vested on the AR Ltd., such amalgamation does not meet definition of 'transfer' u/s 2(66) of the law. There is no sale of assets in amalgamation, nor any price paid by AR Ltd. for the assets vested. So, there will be no capital gain tax on such transfer or even if the value of the shares issued to the shareholders of BA Ltd. is more than the net value of assets vested in the merged transferee.

AR Ltd. is not entitled to carry forward the losses and unabsorbed depreciation of BA Ltd. Such amalgamation does not meet the conditions of Section 42(4) of the Ordinance to do carry-forward and set-off. Upon amalgamation gets effective, BA Ltd. becomes dissolved and discontinued. Section 42(4) allows the carry-forward facility in the case when a company is succeeded by inheritance. Although this amalgamation scheme (court approved) describes the carry-forward entitlement of AR Ltd. to claim benefit of the brought forward losses or/and unabsorbed depreciation, it made subject to admissibility of the same under the provisions of IT Ordinance, 1984. Section 42(4) limits such carry-forward benefit by person, if not by inheritance.

Worked example 11

XYZ Ltd., a private company, is engaged in business segments that cover

(i) mfg/trading of ceramic tiles,
 (ii) mfg/export of leather products and
 (iii) international trading. Net profit of the company for the year ended 30.06.2018 is taka 50,00,000 after giving effect of the following items as appropriate in the books:

- i) License fee taka five lacs incurred for obtaining five-year franchise on 15 July 2017
- ii) Paid cash Taka 50,000 to transport operator, Taka 150,000 to chemical supplier used in tiles mfg.
- iii) Rent taka five lacs received from letting out a part of its office premises. Municipal tax, in respect of the said part of the building, amounting to taka 10,000 remains unpaid:
- iv) Taka three lacs, being loss due to destruction of machinery caused by a fire. The insurance company compensated taka two lacs against the fire loss claim.
- v) Taka 4 lacs and 1 lac being amounts waived by Janata Bank Ltd. out of principal and arrear interest respectively in one-time settlement. Loan was obtained for working capital need five years back.
- vi) Dividend of Tk. 10,000 from Dell Ltd. on 1,000 equity shares of Tk. 10 each purchased at Tk. 100 per share on 10th October, 2017. Dividend declared is 100%, the record date being 01.12.2017. Shares were sold on 01.03. 2018 at Tk. 80 per share. Loss of Tk. 20,000 has been debited to PL a/c.
- vii) Taka 50,000 paid to vendor of office supplies on which VAT was not deducted.
- viii) Depreciation on tangible fixed assets taka one lac including taka 50,000 on assets revaluation.
- ix) Tk 50,000 compensation paid to UK supplier for cancellation of machinery import contract from UK.
- x) Provision for deferred tax taka 1,00,000.

Additional Information for the accounting year ended on 30.06.2018:

- a. Depreciation on tangible fixed assets for the income year (relating to units other than trading unit) as per income tax rules taka 1.75 lac.
- b. Company obtained a loan of taka two lacs from ZXY Pvt. Ltd. in which it holds 30% voting rights. Accumulated profits of ZXY Pvt. Ltd. on the date of receipt of loan was taka 50,000.
- c. Company exports leather products to Spain. Balance Sheet (General Reserve: Surplus on Devaluation) shows a credit of taka 1,75,000, amount realized and brought in the income year from a Spanish customer as surplus on a/c of the devaluation of BDT in 2016.

- d. Company suffered heavy loss in its international trading segment. It was closed down and the fixed assets linked to this trading unit were sold out. Company claimed unabsorbed depreciation (on a/c of trading unit assets) of taka 50,000 in the Return of income. It's not debited to PL a/c.
- e. Under a debt restructuring with Agrani bank, the company converted arrear interest taka 3,00,000 on term loan into a new term loan with a revised repayment schedule. Company paid taka 50,000 towards such funded interest during the year. Entire taka 3,00,000 debited to PL a/c.
- f. Provision for bonus for the income year ended 30.06.2017, disallowed in same income year, paid during the year ended 30.06.2018 taka 1,00,000.
- g. Assessed brought-forward losses and unabsorbed depreciation as follows:

<u>Income Year</u>	<u>Losses Brought Forward</u>	<u>Unabsorbed Depreciation</u>
2014-15	2 lacs	1 lacs
2015-16	----	3 lacs
2016-17	4 lacs	1.5 lacs
Total taka	6 lacs	taka 5.5 lacs

- h. **Tannery at Hazaribag:** In connection with its leather manufacturing unit, XYZ Pvt. Ltd. operates a tannery at Hazaribag. Complying the court decree involving a case with the Government, Company transferred its tannery unit to Savar in which it incurred an expenditure approx. taka 25,00,000 for transfer of entire unit that includes sheds, machineries, equipments, raw material and finished leather.

Company also incurred taka 5,00,000 as legal fees as a member of Tannery association to contest the court case which it lost. These payments shall hit accounts of the current income year.

Planned Expansion on a Retailing unit:

Company's ceramic tiles are not selling that well through its dealers. Management of XYZ Pvt. Ltd. identified the probable causes to such slide in business. Management considers that a watertight retailing entity with selling focus may make a turnaround. Being tax manager of XYZ Ltd, you are tasked to bottom up a report to management on '**optimum capital structure**' for a new retailing unit which maximizes the wealth and minimizes the cost of capital. Your look out is to strike a balance among risk, cost, control and tax consideration arriving at a most tax-efficient model. Estimated initial fund required is taka One crore.

You are aware that BSEC introduced BSEC (Alternative Investment) Rules 2015 to open up Private Equity and Venture Capital (VC) Firm operations. Management spoke to a VC firm who agreed to provide equity-linked debt. Available sources are 100% equity, or a tax-efficient mixture of equity, VC Firm borrowing (interest 8%) and bank loan (interest 10%). Expected ROI (EBIT basis) is 20%. Dividend trend in the same sector is 15%, assume tax rate 35%.

Requirements:

- a. Compute total income of XYZ Ltd. for Assessment Year 2018-19. Show reasons for treatment.
- b. With respect to tannery unit transfer, give your comment with explanations on whether company can claim deductions of taka 25,00,000 and taka 5,00,000 in the current income year tax return.
- c. Suggest as a tax planner most tax-efficient and above-the-dividend-trend alternative for new retail entity supported by detailed computations. Work out on three given alternatives (A: 100% equity, B: 40% equity+40% VC Debt+20% loan, C: 20% equity+30% VC Debt+50% loan).

Solution 11[a]

ASSEESSEE: XYZ Pvt. Limited

Computation of Total Income

Income Year Ended on 30.06.2018. [Assessment Year: 2018-19]

	<u>in Taka</u>
A. Income from House property u/s 24	
Annual Value from premises rental (assumed reasonable)	5,00,000
Less: [1] Repairs & maintenance 30% of A.V. (assumed spent)	1,50,000
[2] Municipal tax levied but not paid	10,000
[Being permissible allowance without proof of actual payment u/s 25(e)]	1,60,000
	<hr/>
Net taxable Income from HP:	3,40,000
B. Income from Business u/s 28:	
Net Profit as per PL a/c	50,00,000
LESS: <u>Income for consideration at separate head:</u>	
[1] Rental income (for consideration at HP income head)	5,00,000
[2] Interest waiver by bank (as it is not income u/s 19(11))	1,00,000
[3] Cash dividend (for consideration at other income head)	10,000
	<hr/>
	(6,10,000)
ADD: <u>Inadmissible expenses</u>	
[1] 5 year's License fee paid for franchise (Amortization will be allowed as per 3 rd Schedule)	5,00,000
[2] Loss on destruction of machinery (29(1)(xi)) (Being actual loss Tk.100,000 but claimed Tk.3,00,000)	2,00,000
[3] Accounting dep. (For separate consideration)	1,00,000
[4] Compensation paid to UK suppliers (for violation of contract)	50,000
[5] Provision for deferred tax (no such provision is allowable u/s 29)	1,00,000
[6] Capital expenditure for shifting tannery to Savar	25,00,000
[7] Municipal tax (for consideration at HP income head)	10,000
[8] Capital loss on sale of shares (as not related to business)	20,000
[9] Interest under debt reconstruction of Agrani Bank [note-5]	3,00,000
	<hr/>
	37,80,000
LESS: <u>Items to be allowed:</u>	
[1] Amortization on License Fee (3 rd Sch, para 10A)	1,00,000
[2] Tax depreciation as per 3 rd schedule	1,75,000
	<hr/>
	(2,75,000)
	<hr/>
Income from Business	78,95,000
Less: Carried forward of business loss and depreciation loss u/s 38	11,50,000
	<hr/>
Income from Business [after carry forward and set-off of earlier year's loss]	67,45,000
C. Capital Gain	
Share transfer:	
Proceeds from share sale	80,000
Less: Cost of acquisition	(100,000)
	<hr/>
Loss on sale of share (not to be set-off as per section 37)	(20,000) Zero

D. Income from Other sources

[1] Cash dividend income from Dell Ltd.	10,000
Less: Exempted up to Tk. 25,000 as per 6 th schedule (Part-A) Para-11A	(10,000) Zero
[2] Deemed dividend u/s 2(26)(e) for taking loan from ZXY Ltd. (Maximum up to accumulated profit of Tk. 50,000).	50,000

TOTAL INCOME 71,35,000

Note:

- [1] There is no violation of section 30(m) of ITO, 1984 for cash payment of Taka 50,000 to transport operator and Taka 150,000 to chemical (raw material) supplier used in tiles mfg. and accordingly not disallowed u/s 30(m).
- [2] There is no violation of section 30(aa) of ITO, 1984 for non-deduction of VAT at source Tk. 50,000 paid to vendor of office supplies with effect from the assessment year 2016-17 and accordingly not disallowed u/s 30(aa).
- [3] Provision for bonus taka 1,00,000 was disallowed earlier year. This year though paid but not reflected in this year's accounts as it is earlier year's expense. There is no provision to allow it as this year's expense u/s 29 of ITO, 1984. So no tax treatment needed this year.
- [4] Company claimed unabsorbed depreciation (on a/c of trading unit assets) of taka 50,000 in the Return of income but not debited to PL a/c. No action is required as it is not allowable as per 3rd schedule.
- [5] Under a debt restructuring with Agrani bank, the company converted arrear interest taka 3,00,000 on term loan into a new term loan with a revised repayment schedule. Company paid taka 50,000 towards such funded interest during the year. Entire taka 3,00,000 debited to PL a/c.

Nothing will be allowed further as it was allowed in the relevant income year u/s 29 on payable basis.

- [6] Legal fee against Govt. decision to move tannery to Savar is allowable expenditure assuming that the cost of the case was borne by the tannery association as per verdict of the honorable court. So it will not matter whether they win or lose. The expenditure is fully related to business and accordingly allowable expenditure.
- [7] There is no tax implication of Tk. 1,75,000 brought in the income year from a Spanish customer as per 6th Schedule (Part-A) para-48 assuming that it was brought through official channel.

Solution 11[b]

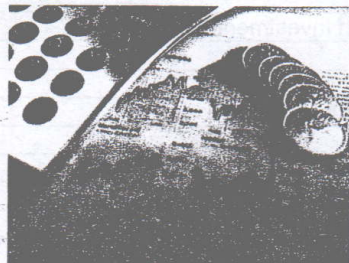
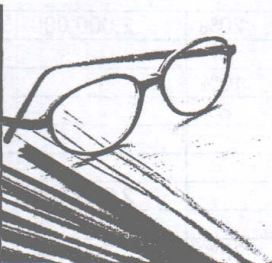
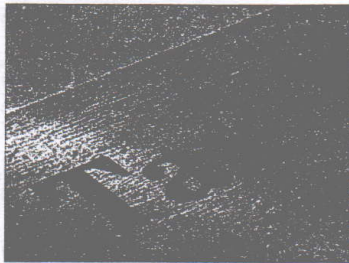
- [1] Expenditure relating to shifting/relocating tannery to Savar is capital in nature. So it is not allowable expenditure as per section 29 of ITO, 1984
- [2] Legal fee against Govt. decision to move tannery to Savar is allowable expenditure assuming that the cost of the case was borne by the tannery association as per verdict of the honorable court. So it will not matter whether they win or lose. The expenditure is related to business and accordingly allowable expenditure.

Solution 11[c]

PARTICULARS	Alternative A Taka	Alternative B Taka	Alternative C Taka
Share Capital	10,000,000	4,000,000	2,000,000
Bank Loan		2,000,000	5,000,000
VC Firm Debt		4,000,000	3,000,000
Total investment	10,000,000	10,000,000	10,000,000
Debt-Equity ratio			

Return on Investment(EBIT basis)	20%	2,000,000	2,000,000	2,000,000
LESS:				
Bank loan interest	10%	-	200,000	500,000
VC Firm Debt	8%	-	320,000	240,000
Total		-	520,000	740,000
Net Income		2,000,000	1,480,000	1,260,000
Income tax	35%	700,000	518,000	441,000
Return on Equity Share Capital		1,300,000	962,000	819,000
Rate of Return on Equity (before dividend tax)		13%	24%	41%

So, Alternative C is the most tax-beneficial Capital Structure (least tax, highest ROI).



Chapter 21

Liability in special cases and assessment of non-residents

Contents

Introduction
Examination context

Topic list

21.1	Liability of representative in certain cases
21.2	Persons to be treated as agent
21.3	Right of representative to recover tax paid
21.4	Liability of firm or association for unrecoverable tax due from partners or members
21.5	Liability of partners, etc., for discontinued business of a firm, etc.,
21.6	Liability of directors for unrecoverable tax of private companies
21.7	Liability of liquidator for tax of private companies under liquidation
21.8	Liability to tax in case of shipping business of non-residents
21.9	Liability to tax in case of air transport business of non-residents

Introduction

Learning objectives

- Define the liability of a representative in certain cases in respect of income.
- Recognize the persons to be treated as agent.
- Identify the right of representative to recover tax paid.
- Recognize the tax liabilities of different persons such as firms or association, partners, directors, liquidator in certain cases
- Define the liability to tax in case of shipping and air transport business of non-residents.

Practical significance

There is no option to avoid the liability for payment of tax. In certain cases the representative of any person in respect of income is liable to take some responsibilities especially for assessment. There is a list of persons who shall be treated as agent in relation to a non-resident. Representative who paid tax on account of his liability has some right to recover the sum so paid from the person on whose behalf it is paid.

There are different types of liabilities. Firm or association has liability for unrecoverable tax due from partners or members. Partners have liability for discontinued business of a firm. Directors have liability for unrecoverable tax of private limited companies. Liquidator has liability for tax of private companies under liquidation. The principal or the agent has liability to tax in case of air transport business of non-residents.

Stop and think

It is obvious that liability of tax cannot be ignored under tax law. The agents or representatives or other persons in certain cases are liable to pay tax on behalf of other persons.

Working context

The agents or representatives or other persons as defined in this chapter in relation to liabilities are sometime seeking expert opinion in this respect. Accountants can give support to their clients. As tax experts, accountants can also help in recovering tax liability from the representative or agent by providing his expertise in this regard.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the liability of a representative in certain cases in respect of income.
- Identify the persons to be treated as agent.
- Illustrate the right of representative to recover tax paid.
- Liability of firm or association for unrecoverable tax due from partners or members.
- Mention the liability of partners, etc., for discontinued business of a firm, etc.
- Define the liability of directors for unrecoverable tax of private companies.
- Identify the liability of liquidator for tax of private companies under liquidation.
- Define the liability to tax in case of shipping business of non-residents.
- Define the liability to tax in case of air transport business of non-residents.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have to remember to recognize the different types of liabilities of representative, agents and persons in different cases.

LIABILITY IN SPECIAL CASES AND ASSESSMENT OF NON-RESIDENTS

Section overview

- ➔ There is no option to avoid the liability for payment of tax under tax law.
- ➔ Liability shall be taken by the representative or agent in certain cases.
- ➔ There is a list of persons who shall be treated as agent of a non-resident.
- ➔ Representative may have the right to recover the tax he paid.
- ➔ There are some procedures to recover tax liabilities of different assessee.
- ➔ Non-residents doing shipping business in Bangladesh will pay tax @ 8% on gross fare, which is considered as the final discharge of tax liability.
- ➔ Non-residents doing air transport business in Bangladesh will pay tax @ 3% on gross receipt which is considered as the final discharge of tax liability.

21.0 Liability of representative in certain cases

- (1) Every person who is a representative of another person in respect of any income
 - (a) be subject to the same duties, responsibilities and liabilities as if such income were received by, or accruing to, or in favour of, him beneficially;
 - (b) be liable to assessment in his own name; and
 - (c) be deemed to be the assessee for all purposes of IT Ordinance, 1984.
- (2) A person, who is assessed as a representative in respect of any income, shall not, in respect of the same income, be assessed under any other provision of IT Ordinance, 1984.
- (3) Nothing shall prevent either the direct assessment of the person for whom, or on whose behalf or for whose benefit, the representative is entitled to receive any income or recovery from such person of the tax payable in respect of such income.

As per section 95 of IT Ordinance, 1984, the following categories of persons may act as the representative of persons as specified:

Represented by	Representative of
the guardian or manager or trustee	minor, lunatic or idiot
the Administrator-General, the Official Trustee, or any receiver, manager or other person appointed by or under any order of a Court,	Any person who actually earns
the trustee or trustees appointed under a trust	Any person who actually earns or recipient of benefits
Agent	Non-resident

21.1 Persons to be treated as agent : section 96 of IT Ordinance, 1984

- 1) For the purposes of this Ordinance, the following persons shall, subject to the provisions of sub-section (2) and (3) be treated as agent in relation to a non-resident, namely -
 - (a) any person in Bangladesh -
 - (i) who is employed by or on behalf of, the non-resident;
 - (ii) who has any business connection with the non-resident;
 - (iii) who holds, or controls the receipts or disposal of any money belonging to the non-resident;
 - (iv) who is a trustee of the non-resident; or
 - (v) from or through whom the non-resident is in receipt of any income. whether directly or indirectly ;

- (b) any person whether a resident or non-resident, who has acquired, by means of transfer, a capital asset in Bangladesh from a person residing outside Bangladesh; and
 - (c) any person who, for any other reasonable cause, is declared or treated as an agent of the non-resident.
- 2) An independent broker in Bangladesh, who in respect of any transaction, does not deal directly with, or on behalf of, a non-resident principal but deals with, or through, a non-resident broker, shall not be treated as an agent in relation to a non-resident in respect of such transaction if -
- (a) the transaction is carried on in the ordinary course of business through the non-resident broker; and
 - (b) the non-resident broker is carrying on such transaction in the ordinary course of business.
- 3) No person shall be treated under this Ordinance as an agent in relation to a non-resident unless he has been given by the Deputy Commissioner of Taxes an opportunity of being heard.

21.2 Right of representative to recover tax paid : section 97 of IT Ordinance, 1984

- (1) A representative who, on account of his liability u/s 95, pays any sum, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his possession or may come to him in his capacity as a representative, an amount equivalent to the sum so paid.
- (2) A representative, or any person who apprehends that he may be assessed as a representative, may retain, out of any money payable to the beneficiary on whose behalf he is liable to tax u/s 95, a sum not exceeding his estimated liability.
- (3) In the event of any disagreement between the beneficiary and the representative or, as the case may be, the person apprehensive of being assessed as representative, as to the amount to be retained under sub-section (2), such representative or person may secure from the DCT a certificate stating the amount to be so retained pending the settlement of the liability and the certificate so obtained shall be the warrant for retaining that amount.

21.3 Liability of firm or AOP for unrecoverable tax due from partners or members: section 98 of IT Ordinance, 1984

- (1) Where any tax payable by partner of a firm or a member of an AOP in respect of his share of the income from the firm or AOP, as the case may be, cannot be recovered from him, the DCT shall notify the amount of the tax to the firm or AOP.
- (2) Upon notification of the amount of tax under sub-section (1), the firm or AOP so notified shall, notwithstanding anything contained in any other law for the time being in force, be liable to pay the said tax and shall, for the purposes of recovery thereof, be deemed to be an assessee in respect of such tax; and the provisions of IT Ordinance, 1984 shall apply accordingly.

21.4 Liability of partners for discontinued business: section 99 of IT Ordinance, 1984

- (1) Where any business or profession carried on by a firm or an AOP has been discontinued, or where a firm or an AOP is dissolved, assessment of the total income of the firm or AOP may be made as if no such discontinuance or dissolution had taken place; and all the provisions of IT Ordinance, 1984 shall, so far as may be, apply accordingly.
- (2) Where an assessment is made under sub-section (1) in respect of a firm or an AOP, every person who was a partner of the firm or member of the association at the time of discontinuance of business, or as the case may be, dissolution of the firm or association, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax found payable by the firm or association upon such assessment and shall, for the purpose of recovery of such tax, including penalty and other sum payable, be deemed to be an assessee; and the provisions of IT Ordinance, 1984 shall apply accordingly.

21.5 Liability of directors for unrecoverable tax of private companies: section 100

- (1) Where any private company is wound up and any tax assessed on the company, whether before, or in the course of, or after its liquidation, in respect of any income of any income year cannot be

recovered, every person who was, at any time during the relevant income year, a director of that company, shall, notwithstanding anything contained in the Companies Act 1913 or Companies Act 1994, be jointly and severally liable to pay the said tax and shall, for the purposes of recovery thereof, be deemed to be an assessee in respect of such tax and the provisions of IT Ordinance, 1984 shall apply accordingly.

- (2) Notwithstanding the provisions of sub-section (1), the liability of any person there under in respect of the income of a private company shall cease if he proves to the DCT that non-recovery of tax from the company cannot be attributed to any gross neglect, misfeasance or breach of any duty on his part in relation to affairs of the company.

21.6 Liability of liquidator for tax of private companies under liquidation: section 101

- (1) A liquidator of a private company which is wound up, whether under the orders of a court or otherwise, shall, within 30 days after he has become such liquidator, give notice of his appointment as such to the DCT having jurisdiction to assess the company.
- (2) The DCT shall, after making such enquiries or, calling for such information as he may consider necessary, notify to the liquidator, within 3 months of the date of receipt of the notice under sub-section (1), the amount which, in his opinion, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.
- (3) On being notified under sub-section (2), the liquidator shall set aside an amount equal to the amount so notified and shall not, before he sets aside such amount, part with any of the assets of the company except for the purpose of payment of tax payable by the company or for making payment to secure such creditors as are entitled under the law to priority of payment over debts due to the Government on the date of liquidation.
- (4) The liquidator shall be personally liable for payment of the tax on behalf of the company to the extent of the amount notified, if any, under sub-section (2), if he -
- a) fails to give notice as required by sub-section (1): or
 - b) contravenes the provisions of sub-section (3)
- (5) Where there are more liquidators than one, the obligations and liabilities of a liquidator shall attach to all the liquidators jointly and severally.
- (6) This law shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

Explanation— In this section, "liquidator" includes any person who has been appointed to be the receiver of the assets of the company under liquidation.

21.7 Liability to tax in case of shipping business of non-resident: section 102

- (1) Where a non-resident carries on the business of operation of ships as the owner or charterer thereof (hereinafter in this section referred to as the principal) tax shall be levied and collected in respect of such business in accordance with the provisions of section 102.
- (2) Before departure from any port in Bangladesh of any ship, the master of the ship shall prepare and furnish to the DCT a return showing-
- (a) the amount paid or payable whether in or out of Bangladesh to the principal, or to any person on his behalf, on account of the carriage of passengers, livestock, mail or goods shipped at the port since the last arrival of the ship; and
 - (b) the amount received, or deemed to be received in Bangladesh by, or on behalf of, the principal on account of the carriage of passengers, livestock, mail or goods shipped at any port outside Bangladesh.
- (3) On receipt of the return, the DCT shall determine the aggregate of the amounts referred to in sub-section (2) and, for this purpose, may call for such particulars, accounts or documents, as he may require and the aggregate of the said amounts so determined, shall be deemed to be income received in Bangladesh by the principal from the said business chargeable to tax under IT Ordinance, 1984 under the head "Income from business or profession", and tax thereon shall be charged @ 8% of such income.

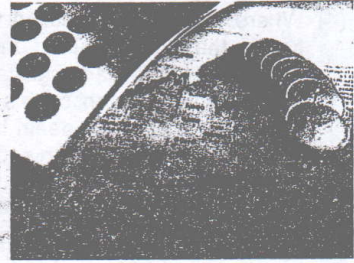
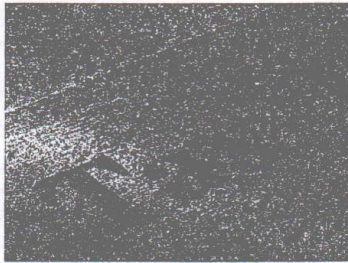
- (4) Where the DCT is satisfied that it is not possible for the master of the ship or the principal to furnish the return required under subsection (2) before the departure of the ship from the port and the principal has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the DCT may, if the return is filed within 30 days of the departure of the ship, deem the filing of the return by the person so authorized by the principal as sufficient compliance with sub-section (2).
- (5) No port clearance shall be granted to the ship until the Commissioner of Customs or any other officer duly authorized to grant the same, is satisfied that the tax payable under sub-section (3) has been duly paid or that satisfactory arrangements have been made for the payment thereof.
- (6) The tax paid shall be deemed to be the final discharge of the tax liability of the assessee under IT Ordinance, 1984 and the assessee shall not be required to file the return of total income under section 75 nor shall he be entitled to claim any refund or adjustment on the basis of such return.

21.8 Liability to tax in case of air transport business of non-residents: section 103A

- (1) Notwithstanding anything contained in this Ordinance, where a non-resident person carries on the business of operation of aircraft, as the owner or charterer thereof (hereinafter in this section referred to as "the principal"), and any aircraft owned or chartered by him calls on any airport in Bangladesh, the aggregate of the receipts arising from the carriage of passengers, livestock, mail or goods loaded at the said airport into that aircraft shall be deemed to be income received in Bangladesh by the principal from the said business chargeable to tax under the head "Income from business or profession", and tax thereon shall be charged at the rate of 3% of such income.
- (2) The principal or an agent authorized by him in this behalf shall prepare and furnish to the DCT, within 45 days from the last day of each quarter of every financial year, that is to say, the thirtieth day of September, the thirty-first day December, the thirty-first day of March and the thirtieth day of June, respectively, return in respect of each quarter as aforesaid showing -
 - (a) the amount paid or payable whether in or out of Bangladesh to the principal, or to any person on his behalf, on account of the carriage of passengers, livestock, mail or goods loaded at the said airport; and
 - (c) the amount received, or deemed to be received, in Bangladesh by, or on behalf of, the principal on account of the carriage of passengers, livestock, mail or goods at any airport outside Bangladesh.
- (3) On receipt of the return, the DCT may, after calling for such particulars, accounts or documents, as he may require, determine the aggregate of the amounts referred to in sub-section (2), and charge tax as laid down in sub-section (1).
- (4) Where, the principal fails to pay the tax payable under sub-section (1) for more than 3 months, the Commissioner of Taxes may issue to the authority by whom clearance may be granted to that aircraft, a certificate containing the name of the principal and the amount of tax payable by him; and on receipt of such certificate, the said authority shall refuse clearance from any airport in Bangladesh to any aircraft owned or chartered by such person until the tax payable has been paid.
- (5) The tax paid as per this section shall be deemed to be the final discharge of the tax liability of the assessee under IT Ordinance, 1984 and the assessee shall not be required to file the return of total income under section 75 nor shall he be entitled to claim any refund or adjustment on the basis of such return.

Thus, sections 102 and 103A of IT Ordinance 1984, prescribes the tax rates on income of non-residents involved with shipping and air transport business which may be mentioned below:

Business	Income tax rate	Return submitted by	Status
Shipping	8%	Master of ship	Final discharge of tax liability
Air transport	3%	Principal or agent	Final discharge of tax liability



Chapter 22

Special provisions relating to avoidance of tax

Contents

Introduction
Examination context

Topic list

22.1	Avoidance of tax through transactions with non-residents
22.2	Avoidance of tax through transfer of assets
22.3	Avoidance of tax by transactions in securities
22.4	Tax clearance certificate required for persons leaving Bangladesh
22.5	Form of tax clearance and exemption certificates

Introduction

Learning objectives

- Identify the measure in case of avoidance of tax through transactions with non-residents
- Define the avoidance of tax through transfer of assets and transaction in securities
- Recognize the conditions and rules for tax clearance certificate required for persons leaving Bangladesh.
- Demonstrate the different forms for tax clearance and tax exemption certificate.
- Mention the conditions for exemption from production of tax clearance certificate.

Practical significance

The tax authorities have some measures in case of avoidance of tax through transactions with non-residents, transfer of assets and transaction in securities. The tax authorities can determine the reasonable amount of income in certain cases of such avoidance.

Subject to some exceptions and conditions, a person who is not domiciled in Bangladesh, or a person who being domiciled in Bangladesh at the time of his departure is required to obtain a tax clearance certificate or tax exemption certificate as the case may be.

Stop and think

There are some measures with tax authorities in case of avoidance of tax in certain cases. Do you think that any person can still avoid tax by any means?

Working context

In case of avoidance of tax through transaction with non-resident or otherwise, either intentional or unintentional, the tax clients are facing many problems from tax authorities. Sometimes they think that the measures taken by tax authorities are not in line with justice. In such a case accountants can help them by providing the expert service in this regard.

The accountants also can support by giving advice to his client in case of tax clearance/exemption certificate required for him while leaving Bangladesh.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the measure in case of avoidance of tax through transactions with non-residents
- Define the avoidance of tax through transfer of assets.
- Define the avoidance of tax through transaction in securities.
- Mention the conditions and rules for tax clearance certificate required for persons leaving Bangladesh.
- Exhibit the different forms of tax clearance and tax exemption certificates
- Recognize the conditions for exemption from production of tax clearance certificate.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

22.0 SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section overview

- The tax authorities have some measures against avoidance of tax.
- Tax authorities can determine the reasonable amount of income in certain cases of tax avoidance.
- Tax clearance or exemption certificate is required for some person leaving Bangladesh at the time of his departure.
- There are some conditions for exemption from production of tax clearance certificate.

22.1 Avoidance of tax through transactions with non-residents: section 104

Where any business is carried on between a resident and a non-resident and it appears to the DCT that, owing to the close connection between them, the affairs of business is so arranged that the business transacted between them produces to the resident either no profits or profits less than the ordinary profits which might be expected to yield in that business, the DCT shall determine the amount of income which may reasonably be considered to have accrued to the resident from such business and include such amount in the total income of the resident.

22.2 Avoidance of tax through transfer of assets: section 105 of IT Ordinance, 1984

- (1) Any income which becomes payable to a non-resident by virtue, or in consequence, of any transfer of assets, whether alone or in conjunction with associated operation, shall be deemed to be the income of the person who-
 - (a) has acquired, by means of such transfer or associated operations, any right by virtue, or in consequence, of which he has the power to enjoy, whether forthwith or in future, the income which becomes so payable to the non-resident, or
 - (b) has received or is entitled to receive at any time, for reasons attributable to such transactions or associated operations, any sum paid or payable by way of loan or repayment of loan or any other sum, not being a sum paid or payable as income or for full consideration of money or money's worth.
- (2) The income which becomes payable to a non-resident and is deemed u/s 105(1), to be the income of the person referred to therein shall be so deemed for all purposes of IT Ordinance, 1984 whether such income would or would not have been chargeable to tax apart from the provisions of section 105.
- (3) The provisions of this section shall not operate if it is shown to the satisfaction of the DCT-
 - (a) that neither the transfer nor any associated operation had for its purpose, or for one of its purposes, the avoidance of liability to taxation; or
 - (b) that the transfer and all associated operations were bona fide commercial transaction and were not designed for the purpose of avoiding liability to taxation.
- (4) Where any person has been charged to tax on any income which is deemed u/s 105(1) to be his income, that income shall not again be deemed to form part of his income for the purpose of IT Ordinance, 1984 if it is subsequently received by him whether as income or in any other form.
- (5) A person shall, for the purposes of this section, be deemed to have power to enjoy the income payable to a non-resident if-
 - (a) such income is in fact so dealt with as to be calculated to ensure at any time for the benefit of such person in any form; or
 - (b) the receipt or accrual of such income operates to increase the value of any assets held by such person or for his benefit; or
 - (c) such person receives or is entitled to receive at any time any benefit provided or to be provided-
 - (i) out of such income; or

- (ii) out of money which is, or will be, available for the purpose by reason of the effect or successive effects of associated operations on such income and on any assets representing the income; or
 - (d) such person has, by means of the exercise of any power of appointment, revocation or otherwise, power to obtain for himself, with or without the consent of any other person, the beneficial enjoyment of such income; or
 - (e) such person is able to control, directly or indirectly, the application of such income, in any manner whatsoever.
- (6) In determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operation, and to all benefits which may at any time accrue to such person as a result of the transfer and associated operations irrespective of the nature or form of the benefit.

Explanation: For the purposes of this section—

- (a) 'assets' includes property or rights of any kind and 'transfer' in relation to assets being rights, includes creation of those rights;
- (b) 'associated operation', in relation to any transfer, means an operation of any kind effected by any person in relation to—
 - (i) any of the assets transferred; or
 - (ii) any income arising from such assets; or
 - (iii) any assets representing, directly or indirectly, any of the assets transferred, or the accumulation of the income arising from such assets;
- (c) 'benefit' includes a payment of any kind;
- (d) references to assets representing any assets transferred, or any income or accumulation of income arising there from, includes references to shares in or obligation of any company to which, or the obligation of any other person to whom, any such assets or that income or accumulation of income is or has been transferred, and
- (e) anybody corporate incorporated outside Bangladesh shall be treated as if it were a non-resident.

22.3 Avoidance of tax by transactions in securities: section 106 of IT Ordinance, 1984

- (1) Where the owner of any securities sells or transfers those securities and buys them back or re-acquires them, or buys or acquires similar securities, and the result of the transaction is that any interest becoming payable in respect of the original securities sold or transferred by the owner is not receivable by the owner, the interest payable as aforesaid shall be deemed, for all purposes of IT Ordinance, 1984 to be the income of such owner and not of any other person, whether the interest payable as aforesaid would or would not have been chargeable to tax apart from the provisions of this sub-section.
- (2) Where any person has had for any period during an income year any beneficial interest in any securities and the result of any transactions within that year relating to such securities or the income thereof is that no income is received by him, or that the income received by him is less than the sum which the income would have amounted to, had the income from such securities accrued from day to day, and been apportioned to the said period, then the income from such securities for the said period shall be deemed to be the income of such person.
- (3) Where, any person carrying on a business which consists wholly or partly in dealing in securities buys or acquires any securities from any other person and either sells back or re-transfers those securities, or sells or similar securities, to such other person, and the result of the transactions is that the interest becoming payable in respect of the securities bought or acquired by him is receivable by him but is not deemed to be his income by reason of the provisions of section 106(1), no account shall be taken of the transactions in computing for any of the purposes of IT Ordinance, 1984 any income arising from, or loss sustained, in the business.

- (4) The DCT may, by notice in writing, require any person to furnish him, within such time, not being less than 28 days, as may be specified in the notice, such particulars in respect of all securities of which such person was the owner, or in which he had beneficial interest at any time during the period specified in the notice, as the DCT may consider necessary for the purpose of ascertaining whether tax has been borne in respect of the interest on all those securities and also for other purposes of this section.

Explanation: For the purposes of this section-

- (a) 'interest' includes dividend;
- (b) 'securities' includes stocks and shares; and
- (c) securities shall be deemed to be similar if they entitle their holders to the same right against the same persons as to capital and interest and the same remedies for the enforcement of these rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred.

22.4 Tax clearance certificate required for persons leaving Bangladesh: section 107

Requirement for tax clearance/exemption certificate

- (1) A person who is not domiciled in Bangladesh, or a person who being domiciled in Bangladesh at the time of his departure is not, in the opinion of an income tax authority likely to return to Bangladesh, shall not leave Bangladesh without obtaining from the DCT authorized in this behalf by the NBR-
 - (a) a tax clearance certificate, or
 - (b) if he has intention of returning to Bangladesh, an exemption certificate which shall be issued only if the DCT is satisfied that such person has such intention; and such exemption certificate may be either for a single journey or for all journeys within the period specified in the certificate [section 107(1)].
- (2) The owner or charterer of any ship or aircraft, who issues any authority to any person referred to in section 107(1) for travel by such ship or aircraft from any place in Bangladesh to any place outside Bangladesh unless such person has a certificate required by that section, shall-
 - (a) be liable to pay the amount of tax, if any, which has or may become due and payable by such person and also to a penalty which may extend to two thousand taka; and
 - (b) be deemed, for the purposes of recovery of such tax and penalty, to be an assessee in default, and all the provisions of this Ordinance shall apply accordingly [section 107(2)].

Explanation: For the purposes of section 107-

- (a) 'exemption certificate', in relation to any person, means a certificate to the effect that such person is exempt from the requirement of having a tax clearance certificate for the purpose of the journey or journeys specified therein;
- (b) 'owner' or 'charterer' includes any representative, agent or employee who may be empowered by the owner or charterer of a ship or aircraft to issue an authority to travel by the ship or aircraft; and
- (c) 'tax clearance certificate', in relation to a person, means a certificate to the effect that such person has no liability under IT Ordinance, 1984 the Income tax Act, 1922, the Gift-tax Act, 1963 or, or the Wealth-tax Act, 1963, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by which person.

22.5 Form of tax clearance and tax exemption certificates [Rule 61]:

- (1) Every application for a tax clearance certificate or an exemption certificate shall be made, in terms of rule 61, in the following form:

Application for a certificate under section 107 of the Income Tax Ordinance, 1984:

To
The Deputy Commissioner of Taxes.

Sir,
I request that a tax clearance/exemption certificate be granted to me. Necessary particulars are given below.

1. Name of applicant
(in block letters).
2. Domicile.....
3. Present address.....
4. Permanent address.....
5. Nature of Business or profession in Bangladesh
(if the visit to Bangladesh was made only as a tourist and no income was earned during the period of stay in Bangladesh, it should be so stated).
6. Place(s) at which the business or profession is or was carried on
.....
7. Name and address of employer(s) of the applicant.....
(in case the applicant is representing a firm or a company, the name and address of the firm or company should be stated)
8. Name of the DCT, where last assessment of the applicant was made.....
9. Date of arrival in Bangladesh.....
10. Probable date of departure.....
11. Destination.....
12. Mode of travel (air/sea/land).....

Place:
Date:

Yours faithfully,
(Applicant)

N. B. Please see the certificate.

When the applicant is an existing assessee, the application should be addressed to the DCT who completed the last assessment.

***Strike out whichever is inapplicable.**

Form of certificate to be furnished by Employers/Associates/Agents/Head Office/Branch Office, etc.

Certified that.....is our employee/ representative/ associate.

1. (Name in block letters)
2. (i) Certified that(name) is leaving Bangladesh temporarily on leave/duty and will return by..... (Give approximate date).
*(ii) Certified that his/her income was less than the taxable minimum during the period(s).
(iii) A cheque for the amount of tax due along with the computation of income is enclosed.
(iv) We undertake to pay the tax liability, if any, when determined.

Signature

Designation.....

Name and address of the Employers/Associates/Agents/Head Office/Branch Office

***Strike out whichever is inapplicable**

Guarantee Certificate to be furnished by a tax payer in Bangladesh in the case of persons who are neither employees nor representatives of any firm.

We/I,.....certify (name in block letters) that
.....is known to us/me and that we/I undertake to pay his/her, tax liability, if any, when determined.

Signature of the guarantor.....
Name and address.....

TIN
Circle

Tax clearance certificate issued by the DCT shall be in the following form:-

Book No.	Serial No.	Book No.	Serial No.
<p>Counterfoil of certificate under section 107 of the IT Ordinance, 1984 (XXXVI of 1984)</p> <p>Date _____</p> <p>Name _____</p> <p>Present address _____</p> <p>Permanent address _____</p> <p>Business of profession _____</p> <p>Date of arrival in Bangladesh _____</p> <p>Date of departure _____</p> <p>(as stated in the application)</p> <p>Date up to which the certificate is Valid _____</p> <p>Challan No. and date of payment of tax _____</p> <p>Signature of left-hand thumb impression of the Person named in the certificate _____</p> <p>Deputy Commissioner of Taxes _____ / Circle.</p> <p>Signature of the left-hand _____ / Circle.</p>		<p>TAXES DEPARTMENT</p> <p>Certificate under section 107 of The Income Tax Ordinance, 1984 (XXVI of 1984)</p> <p>Office of the DCT</p> <p>_____ Circle _____</p> <p>Place _____</p> <p>Date _____</p> <p>This is to certify that _____ of _____ (whose signature or thumb impression is affixed below) has no liability made satisfactory arrangements for his/her liabilities under the Income Tax Ordinance, 1984 (XXXVI of 1984), the Income tax Act, 1922 (XI of 1922), the Gift-tax Act, 1963 (XIV of 1963) Gift Tax Act, 1990 (XLIV of 1990) or the wealth tax Act, 1963 (XV of 1963). This certificate is valid up to _____</p> <p>Signature _____</p> <p>Deputy Commissioner of Taxes, Signature of left-hand /Circle. Thumb impression of the Person named In the Certificate</p>	

Exemption certificate issued by the DCT shall be in the following form:

Book No.	Serial No.	Book No.	Serial No.
<p>Counterfoil of certificate under section 107 Of the IT Ordinance, 1984 (XXXVI of 1984)</p> <p>Date _____</p>		<p>TAXES DEPARTMENT</p> <p>Certificate under section 107 of The Income Tax Ordinance, 1984 (XXVI of 1984)</p> <p>Office of the Deputy Commissioner of Taxes</p>	

Name _____
Present address _____
Permanent Address _____

Place _____
Date _____

Date of arrival in Bangladesh _____
Date of application _____
Date of departure _____
(as stated in the application)

This is to certify that _____
of _____ (whose signature
or thumb impression is affixed below) is
exempted from producing evidence of
payment of taxes in connection with his
journey to all journey performed before.

Deputy Commissioner of Taxes
_____ / Circle.

Signature _____
Deputy Commissioner of
Taxes, _____ / Circle
Signature or left-hand Thumb impression of
the Person named in the
certificate _____

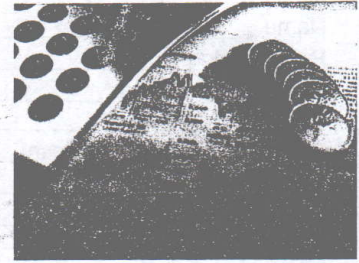
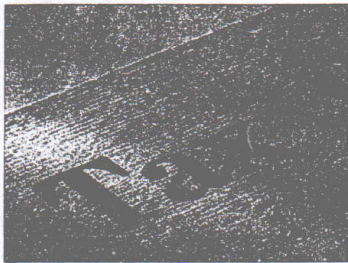
Signature or left-hand thumb impression of the
Person named in the certificate This certificate is
valid up to

Production of certificate of tax clearance or exemption certificate before any officer of immigration or customs [Rule 62]:

- (1) Subject to the provisions of rule 63, every person who is not domiciled in Bangladesh shall be required to produce a tax clearance certificate or exemption certificate to an officer of immigration or customs for examination before he leaves Bangladesh.
- (2) In the case of a person who claims to be domiciled in Bangladesh, the officer of immigration or customs may accept any of the following evidences of nationality, namely:-
 - a) a passport issued by the Government; or
 - b) a certificate of nationality or domicile issued by a District Magistrate or the Government.

Exemption from production of tax clearance certificate [Rule 63]: The following exceptions are made under section 107(1) of IT Ordinance, 1984 namely:

- (1) all person below the age of 18 years [rule 63(a)];
- (2) passengers who can show by the dates stamped on their passports or by other reliable evidence; that-
 - I. they have not spent more than 90 days at a time in Bangladesh; and
 - II. they have not spent more than 90 days in any financial year in Bangladesh [rule 63(b)];
- (3) all members of diplomatic, trade or commercial missions appointed by foreign Governments, trade commissioners and consul democratic and all full time employees of such diplomatic missions, trade commissioners and consular officers [rule 63(f)];
- (4) all officers and employees of foreign Government visiting Bangladesh on duty [rule 63(g)]
- (5) the wives and dependents of persons covered by rules 63(f) and (h) [rule 63(h)];
- (6) Woman who gives a declaration to the effect that she is wholly dependent upon her husband, parent or guardian and has no independent source of income [rule 63(i)].



Chapter 23

Powers of income tax authorities including search and seizure

Contents

Introduction
Examination context

Topic list

23.1	Introduction
23.2	Power to call for information
23.3	Power to inspect registers of companies
23.4	Power of survey
23.5	Additional powers of enquiry and production of documents
23.6	Power of search and seizure
23.7	Power of giving order for not removing property
23.8	Power to verify deduction or collection of tax
23.9	Retention of seized assets
23.10	Application of retained assets
23.11	Power of IJCT to revise orders of DCT
23.12	Revisional power of Commissioner
23.13	Power to take evidence on oath, etc.

Introduction

Learning objectives

- Identify the power of respective income tax authorities to call for information.
- Identify the power to inspect the registers of company
- Recognize the power of survey.
- Demonstrate the additional power of enquiry and requiring the production of documents.
- Power of search and seizure.
- Power to verify withholding taxes.
- Right to retain the seized assets and application thereof.
- Power of revision of orders.
- Power to take evidence on oath.

Practical significance

To carry out the responsibilities and ensure compliance in adopting different rules, respective income tax authorities have been given sufficient powers. Such powers may be to call for information, inspect the registers, conduct survey, require for documents, search and seizure, verify deduction and collection of taxes, retaining seized assets, revise orders and take evidence on oath.

For different assesses, it is very important as they require to know the power of authorities so that they can comply with the specific requirements.

Stop and think

Respective income tax authorities enjoy required powers to carry out their job smoothly. Do you think that you know all of such powers applicable to different income tax authorities?

Working context

Powers of income tax authorities are very important for both income tax authorities and assesses. Accountants can provide valuable advises to clients in case of non-compliance and any type of failures if they know the power of income tax authorities properly. It will be helpful for the client to avoid excessive penalty or other types of punishment. It is also an important part of tax planning.

The accountants can also support by giving advice to his client in case of powers already exercised by income tax authorities for non-compliance or failures.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Mention the power of income tax authorities to call for information
- Identify the power to inspect the registers of company
- Demonstrate the additional power of enquiry and requiring the production of documents
- Power of search and seizure
- Power to verify the deduction and collection of taxes.
- Right to retain the seized assets and application thereof.
- Power of revision of orders.
- Power to take evidence on oath.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

23.0 POWERS OF INCOME TAX AUTHORITIES INCLUDING SEARCH AND SEIZURE Section overview

- ➔ The tax authorities enjoy powers to exercise required jobs and responsibilities.
- ➔ Tax authorities have powers to search and seize assets and retain them.
- ➔ Tax authorities may verify the documents of withholding taxes.
- ➔ Tax authorities may revise the orders already passed in respective cases.

23.1 Introduction

Income tax authorities enjoy the power of search and seizure of books of accounts, records, documents and moveable properties after searching through the business premises, residential building, vessel, aircraft, or any other places belonging to a person. This chapter covers required provisions under IT Ordinance, 1984 regarding such power of income tax authorities.

23.2 Power to call for information: section 113

The DCT, the IJCT, the Commissioner, the DG, Central Intelligence Cell of NBR, or any other officer authorized in this behalf by the Commissioner or the Board may, for the purposes of IT Ordinance, 1984 by notice in writing, require-

SL	Assessee	Requirements
(a)	Firm	a statement of the names and addresses of the partners and their respective shares
(b)	Hindu undivided family (HUF)	a statement of the names and addresses of the manager and the members of the family
(c)	Any person to be a trustee, guardian or agent	a statement of the names and addresses of the persons for or of whom he is trustee, guardian or agent
(d)	Any assessee	a statement of the names and address of all persons to whom he has paid in any income year any rent, interest, commission, royalty or brokerage, or any annuity, not being an annuity classifiable under the head "Salaries", amounting to more than three thousand taka, together with particulars of all such payment
(e)	Any dealer, broker or agent, or any person concerned in the management of a Stock Exchange	a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the transfer of capital assets, or on whose behalf or from whom he or the Exchange has received any such sum, together with the particulars of all such payments and receipts
(f)	Any person, including a banking company	information in relation to such points or matters, or such statements or accounts giving such particulars, as may be specified in the notice (Provided that no such notice on a banking company shall be issued by the DCT or the Inspector, without the approval of the Commissioner)

23.3 Power to inspect registers of companies :section 114

The DCT, the IJCT or any person authorized in writing in this behalf by either of them, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or any entry in such register.

23.4 Power of survey: section 115

- (1) For the purpose of survey of liability of any person to tax under IT Ordinance, 1984 an income tax authority may, subject to such directions or instructions as the Board may issue in this behalf, enter any place of premises within the limits or its jurisdiction and-
 2. inspect any accounts or documents and check or verify any article or thing;
 3. make an inventory of any cash, stock or other valuable articles or things checked or verified by it;
 4. place marks of identification on or stamp the books of accounts or other documents inspected by it and make or cause to be made extracts or copies there from;
 5. record the statement of any person which may be useful for, or relevant to, any proceeding under this Ordinance; and
 6. make such enquiries as may be necessary.
- (2) Subject to the provisions of section 117, any income-tax authority exercising powers under sub-section (1), shall not remove or cause to be removed from any place or premises wherein he has entered, any books of accounts or other documents, or any cash, stock or other valuable article or thing.

- (3) Every proprietor, employee or other person who may be attending in any manner to, or helping in, the carrying on of any business or profession, or every person who may be residing in the place or premises in respect of which an income tax authority may be exercising power under sub-section (1), shall in aid of the exercise of such power,
 - (a) afford the authority necessary facilities for inspection of books of accounts or other documents, or for checking or verifying the cash, stock or other valuable article or thing found in such place or premises; and
 - (b) furnish such information as the authority may require in respect of any matter which may be useful for, or relevant to, any proceeding under this Ordinance.

23.5 Additional powers of enquiry and production of documents: section 116

- (1) The DG of Inspection, the Commissioner, the DG, Central Intelligence Cell(CIC) and the IJCT may, without prejudice to other powers which they may have under other provisions of IT Ordinance, 1984 make any enquiry which they consider necessary as respects any person liable, or believed by them to be liable, to assessment under IT Ordinance, 1984 or require any such person or any other person in relation to such enquiry to appear before him at the time and place as directed for providing any information or to produce or cause to be produced necessary documents, accounts or records including any electronic records any systems referred to in the Explanation of sub-section(2) of section 117 under the possession or control of such person or such other person.
- (2) For the purposes of sub section (1), the DG of Inspection, the Commissioner, the DG, Central Intelligence Cell, and the IJCT shall have the same powers as the DCT has under IT Ordinance for the purposes of making enquiry or requiring the production of accounts or documents including the powers under section 117(2).
- (3) The Commissioner, the DG, Central Intelligence Cell, the IJCT, the DCT or an Inspector, if he is so authorized in writing, may, for the purpose of making any enquiry which he considers necessary, enter the premises in which a person liable or believed by him to be liable to assessment, carries on his business or profession, and may call for and inspect any such person's accounts or any documents in his possession, and may stamp any accounts or documents so inspected, and may retain such accounts or documents for so long as may be necessary for examination thereof or for the purposes of a prosecution:

Provided that the DCT or an Inspector shall not make any enquiries from any scheduled bank regarding any client of such bank except with the prior approval of the Commissioner, the DG, Central Intelligence Cell.

23.6 Power of search and seizure: section 117

- (1) Where the DG of Inspection or the Commissioner, the DG, Central Intelligence Cell or such other officer empowered in this behalf by the Board, has, on account of information in his possession, reason to believe that-
 - (a) any person, to whom a summons or notice under IT Ordinance has been or might be issued to produce, or cause to be produced, any books of accounts or other documents, or electronic records and systems, has failed to, or is not likely to, produce or cause to be produced such books of accounts or other documents, or
 - (b) any person is in possession of any money, bullion, jewellery or other valuable article or thing which represents, wholly or partly, income or property which is required to be disclosed under IT Ordinance but has not been so disclosed, he may authorize any officer subordinate to him, being not below the rank of the DCT, to exercise the powers under sub-section (2).
- (2) An officer authorized under sub-section (1) (hereinafter referred to as the authorized officer) may, notwithstanding anything contained in any other law for the time being in force,

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that any books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing referred to in sub-section (1) are or have been kept;
 - (b) break-open the lock of any door, box, locker, safe, almirah or other receptacle for the purpose of the said entry, and search, if keys thereof are not available;
 - (c) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if he has reason to suspect that such person has secreted about his person any such books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing;
 - (d) seize any such books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing found as a result of such search;
 - (e) place marks of identification on or stamp any books of accounts or other document or make or cause to be made extracts or copies therefrom; and
 - (f) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing;
 - (g) extract the data, images or any inputs stored in the electronic records and systems or enter the systems by breaking through password protection or copy or analyze the data, books of accounts, documents, images or inputs.
- (3) The authorized officer may requisition the services of any police officer or other officer of the Government or any professional expert from outside the government to assist him for all or any of the purposes specified in sub-section (2); and it shall be the duty of every such officer or professional expert to comply with such requisition.
- (4) The authorized officer may, where it is not practicable to seize any such books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing, by order in writing, require the owner or the person who is in immediate possession or control thereof not to remove, part with or otherwise deal with it without obtaining his previous permission; and the authorized officer may take such steps as may be necessary for ensuring compliance with the order:
- Provided that if the owner or the person concerned, without any reasonable cause, fails to comply with the provisions of this sub-section, the Deputy Director General, Central Intelligence Cell or the DCT may realize from him the money or the value of the bullion, jewellery, valuable article or thing, if any, removed, parted with or otherwise dealt with; and in such a case, the said person shall be deemed to be an assessee in default under IT Ordinance.
- (5) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing and any statement made by such person during the examination may thereafter be used in evidence in any proceeding under this Ordinance, or the Income-tax Act, 1922.
- (6) Where any books of accounts, documents, electronic records and systems, money, bullion, jewellery or other valuable article or thing is found in the possession or control of any person in the course of a search, it may be presumed that-
- (a) the books of accounts, documents, electronic records and systems, money, bullion, jewellery, article or thing belongs to such person;
 - (b) the contents of the books of accounts and documents, the books of accounts, documents, electronic records and systems, are true; and
 - (c) the signature on, or the handwriting in, any such books or documents is the signature or handwriting of the person whose signature or handwriting it purports to be.

- (7) The person from whose custody any books of accounts or other documents or electronic records and systems, are seized under sub-section (2) may make copies thereof, or take extracts there from, in the presence of the authorized officer or any other person designated by him, at such place and time as the authorized officer may appoint in this behalf.
- (8) The books of accounts or other documents or electronic records and systems, seized under sub-section (2) shall not be retained by the authorized officer for a period exceeding one hundred and eighty days from the date of the seizure unless for reasons recorded in writing, approval of the Commissioner, the DG, Central Intelligence Cell has been obtained for such retention: Provided that the Commissioner, the DG, Central Intelligence Cell shall not approve such retention for a period exceeding thirty days after all the proceedings under this Ordinance in respect of the years for which the books of accounts or other documents, [electronic records and systems, as are relevant, have been completed.
- (9) If any person, legally entitled to the books of accounts or other documents or electronic records and systems, seized under sub-section (2) objects to the approval given by the Commissioner the DG, Central Intelligence Cell under sub-section (8), he may make an application, stating therein the reasons for his objection, to the Board for the return of the books of accounts or other documents; or electronic records and systems, and the Board may, after giving the applicant an opportunity of being heard, pass such orders thereon as it may think fit.
- (10) Subject to the provisions of IT Ordinance and the rules, if any, made in this behalf by the Board, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to search and seizure shall apply, so far as may be, to search and seizure under sub-section (2).

Explanation- For the purposes of this section, the word "proceeding" means any proceeding in respect of any year under this Ordinance which may be pending on the date on which a search is authorized under this section or which may have been completed on or before such date and also includes all proceedings under this Ordinance which may be commenced after such date in respect of any year.

23.7 Power of giving order for not removing property: section 116A

- (1) Where, in the course of performing functions under IT Ordinance, the DG, Central Intelligence Cell or the Commissioner has definite information in his hands that any person has concealed the particulars of income or investment, he may, by order in writing, require any person who is in immediate possession or control of any money, bullion, jewellery, financial instrument, financial asset, valuable article or any other property not to remove, part with, or otherwise deal with it without obtaining previous permission of the concerned authority passing such order.
- (2) Every such order shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).
- (3) The income tax authority mentioned in sub-section (1) may extend such period or periods with the approval of the Board: Provided that the total period of extension shall in no case exceed one year.
- (4) In computing the period referred to sub-section (2) and sub-section (3), the period, if any, for which the order under sub-section (1) has been stayed by any court, shall be excluded.

23.8 Power to verify deduction or collection of tax : section 117A

The Board or any other authority empowered by the Board in this behalf may enter the premises of a deducting or collecting authority to examine, monitor or verify books of accounts and relevant records in relation to -

- (i) deduction or collection of tax by the concerned authority in accordance with the provisions of chapter VII of this Ordinance; and
- (ii) deposit of the tax so collected or deducted to the credit of the government as per rules.

23.9 Retention of seized assets: section 118

- (1) Where any money, bullion, jewellery or other valuable article or thing (assets) is seized under section 117, the authorized officer shall, unless he himself is the DCT, forward a report thereof, together with all relevant papers, to the DCT.
- (2) Where he has seized any asset under section 117, he has received a report under sub-section (1), the DCT shall, after giving the person concerned a reasonable opportunity of being heard and making such enquiry as the DG of Inspection or the Commissioner may direct, within 90 days of the seizure of the assets, and with the previous approval of the Commissioner,-
 - i. estimate the undisclosed income (including income from the undisclosed property), in a summary manner to the best of his judgment on the basis of such materials as are available with him;
 - ii. calculate the amount of tax payable under IT Ordinance on the income so estimated; and
 - iii. specify the amount that will be required to satisfy any existing liability under this Ordinance, the Income tax Act, 1922 (XI of 1922), the Gift tax Act, 1963 (XIV of 1963), and the Wealth-tax Act, 1963 (XV of 1963), in respect of which such person is in default or is deemed to be in default:

Provided that if, after taking into account the materials available with him, the DCT is of the view that it is not possible to ascertain to which particular income year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

Explanation- In computing the period of ninety days for the purposes of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

- (3) After completing the proceedings under sub-section (2), the DCT shall, with the approval of the Commissioner, make an order requiring the person concerned to pay the aggregate of the amounts referred to in sub-section (2) (b) and (c) and shall, if such person pays, or makes satisfactory arrangement for the payment of, such amounts or any part thereof, release the assets seized under section 117 or such part thereof as he may deem fit in the circumstances of the case.
- (4) Where the person concerned fails to pay, or to make satisfactory arrangements for the payment of, any amount required to be paid in pursuance of the order under sub-section (3) or any part thereof, he shall be deemed to be an assessee in default in respect of the amount or part, and the DCT may retain in his custody the assets seized under section 117 or any part thereof as are in his opinion sufficient for the realization of the said amount or, as the case may be, of such part thereof as has not been paid.
- (5) If the DCT is satisfied that the assets seized under section 117 or any part thereof were held by a person for or on behalf of any other person, he may proceed under this section against such other person, and all the provisions of this section shall apply accordingly.
- (6) If any person objects, for any reason, to an order made under sub-section (3), he may, within 30 days of the date of such order, make an application, stating therein the reasons for his objection, to the Commissioner for appropriate relief in the matter; and the Commissioner may, after giving the applicant an opportunity of being heard, pass such orders thereon as he may think fit.

23.10 Application of retained assets: section 118

- (1) Where the assets retained under sub-section (4) of section 118 consist solely of money, or partly of money and partly of other assets,-

- (a) the DCT shall first apply such money towards payment of the amount in respect of which the person concerned is deemed to be an assessee in default under that sub-section; and thereupon such person shall be discharged of his liability to the extent of the money so applied; and
 - (b) where, after application of the money under clause (a), any part of the amount referred to therein remains unpaid, the DCT may recover the amount remaining unpaid, by sale of such of the assets as do not consist of money in the manner movable property may be sold by a Tax Recovery Officer (TRO) for the recovery of tax; and for this purpose he shall have all the powers of a TRO under IT Ordinance.
- (2) Nothing contained in sub-section (1) shall preclude the recovery of the amount referred to in section 118 (4) by any other mode provided in IT Ordinance for the recovery of any liability of an assessee in default.
 - (3) Any assets or proceeds thereof which remain after the discharge of the liability in respect of the amount referred to in section 118 (4) shall forthwith be made over or paid to the persons from whose custody the assets were seized.

23.11 Power of IJCT to revise order of DCT: section 120

- (1) The IJCT may call for from the DCT and examine the record of any proceeding under IT Ordinance, and, if he considers that any order passed therein by the DCT is **erroneous in so far as it is prejudicial to the interests of the revenue**, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made, such inquiry as he thinks necessary, pass such order thereon as in his view the circumstances of the case would justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment to be made within 4 years from the date of the order sought to be revised.
- (2) Nothing in section 93 shall bar any proceeding under this section in applicable cases.

23.12 Revision power of Commissioner: section 121A

- (1) The Commissioner may on an application made by the assessee, call for the record of any proceeding under IT Ordinance in which an order has been passed by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of IT Ordinance, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.
- (2) The application for revision of an order under IT Ordinance passed by any authority subordinate to the Commissioner shall be made within 60 days of the date on which such order is communicated to the assessee or within such further period as the Commissioner may consider fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within the said 60 days.
- (3) The Commissioner shall not exercise his power in respect of any order-
 - (c) where an appeal against the order lies to the AJCT or to the Commissioner (Appeals) or to the Appellate Tribunal and the time within which such appeal may be made has not expired or the assessee has not waived his right of appeal; or
 - (d) where the order is pending on an appeal before the AJCT or it has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.
- (4) No application under sub-section (1) shall be entertained unless-
 - iv. it is accompanied by a fee of two hundred taka; and
 - v. the undisputed portion of the tax has been paid.

Explanation- The "undisputed portion of the tax" means the tax payable under section 74.

- (5) For the purposes of this section, an order by the Commissioner declining to interfere shall not be construed as an order prejudicial to the assessee.
- (6) Notwithstanding anything contained in IT Ordinance, an application for revision made under sub-section (1) shall be deemed to have been allowed if the Commissioner fails to make an order thereon within a period of 60 days from the date of filing the application.

Explanation- For the purposes of this section, the AJCT shall be deemed to be an authority subordinate to the Commissioner to whom the DCT, whose order was the subject-matter of the appeal order under revision, is subordinate.

23.13 Power to take evidence on oath, etc.: section 122

- (1) The DCT, the IJCT, the Commissioner, the DG, Central Intelligence Cell, the Commissioner (Appeals) and the Taxes Appellate Tribunal shall, for the purposes of IT Ordinance, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:
 - vi. discovery and inspection;
 - vii. enforcing the attendance of any person and examining him on oath or affirmation;
 - viii. compelling the production of accounts or documents (including accounts or documents relating to any period prior or subsequent to the income year); and
 - ix. issuing commissions for the examination of witness.
- (2) The DCT shall not exercise his powers under this section for the purpose of enforcing the attendance of an employee of a scheduled bank as a witness or compelling the production of books of account of such a bank except with the prior approval of the Commissioner.
- (3) Any authority mentioned in sub-section (1) may impound and retain in its custody for such period as it considers fit, any books of accounts or other documents produced before it in any proceeding under IT Ordinance.
- (4) Any proceeding under IT Ordinance, before any authority mentioned in sub-section (1), shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Penal Code (Act XLV of 1860).



Chapter 24

Penalty

Contents

Introduction
Examination context

Topic list

24.1	Introduction
24.2	Penalty for not maintaining accounts in the prescribed manner
24.3	Penalty for failure to file return, certificate, statement, accounts or information
24.4	Penalty for using fake Tax-payer's Identification Number
24.5	Penalty for failure to pay advance tax
24.6	Penalty for non-compliance with notice
24.7	Penalty for failure to pay tax on the basis of return
24.8	Penalty for concealment of income
24.9	Penalty for default in payment of tax
24.10	Summary of penalties
24.11	Bar to impose penalty without hearing
24.12	Previous approval of IJCT for imposing penalty
24.13	Orders of AJCT, CT(Appeals) or Taxes Appellate Tribunal to be sent to DCT
24.14	Penalty to be with prejudice to other liability
24.15	Revision of penalty on the basis of revised income
24.16	Offences and Prosecution

Introduction

Learning objectives

- Mention the different non-compliances of tax law for which penalties are imposed.
- Identify the penalties due to non-compliance of tax law in certain cases.
- Define the measures against any order of penalty.

Practical significance

If any person without any reasonable cause failed to comply with tax law in certain cases the tax authorities may impose penalty on that person. There are requirements by tax law such as maintaining of accounts in the prescribed manner, filing of return, statements, accounts or information, payment of advance tax, compliance with notices, payment of tax on the basis of return etc. Non-compliance of these requirements may cause to penalties payable by the persons for such non-compliances. Concealment of income and default in payment of tax are also caused penalties.

No penalties mentioned here shall be made on any person unless such person has been heard or has been given a reasonable opportunity of being heard. The imposition of any penalty on any person shall be without prejudice to any other liability.

Stop and think

Did you realize how important it is to ensure the compliance of the requirements of tax law mentioned in this chapter for avoiding penalties? The penalties can be quite extensive in some cases.

Working context

You need to know the consequences for non-compliance of the requirements of tax law in this chapter. You must keep it in mind that the penalties may be massive and imposition of penalties for such non-compliance can also harm the reputation of the assessee and his financial sustainability.

The accountants can help the clients to comply with all the requirements of tax law in this regards so that the clients can avoid any such penalties and retain the esteem from tax authorities and stakeholders.

Syllabus links

The topics covered in this chapter are very important as it is dealt with the legal requirement of tax law.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the penalty for not maintaining accounts in the prescribed manner.
- Identify the penalty for failure to file return, statement, accounts or information.
- Identify the penalty for failure to pay advance tax and failure to pay tax on the basis of return.
- Identify the penalty for non-compliance with notice, concealment of income and default in payment of tax.
- Mention the bar to impose penalty.
- Demonstrate the authority and procedures for imposition of penalty.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have to remember the requirements of tax law in relation to imposition of penalty in case of non-compliance with the amount or rate of penalties.

24.0 IMPOSITION OF PENALTY

Section overview

- ➔ Penalties can be imposed on any person for non-compliance of certain tax law.
- ➔ The amount and rate of penalties can be varied in case to case.
- ➔ Unless giving reasonable opportunity of being heard, no penalties shall be imposed other than a few.

24.1 Introduction

Penalty is the outcome of non-compliance of any provisions of IT Ordinance in any manner. Such penalties are important to encourage compliance and establish equity at the time of imposing penalty. As per chapter XV of The Income Tax Ordinance, 1984 a penalty may be imposed on following grounds:

- a) for not maintaining accounts in the prescribed manner
- b) for failure to file return, statement, accounts or information
- c) for using fake Tax-payer's Identification Number (TIN)
- d) for failure to pay advance tax
- e) for non-compliance with notices
- f) for failure to pay tax on the basis of return
- g) for concealment of income
- h) for default in payment of tax

Each of the above mentioned failures or non-compliances is offence and subject to specific penalty as per the provisions laid down in chapter XV of IT Ordinance 1984 except penalty for default in payment of tax (h) above on which penalty is imposed as per the provisions laid down in chapter XVI (section 137) of IT Ordinance 1984.

24.2 Penalty for not maintaining accounts in the prescribed manner :section 123

Where any person has, without reasonable cause, failed to comply with the provisions of any order or rule made in pursuance of, or for the purposes of section 35(2), the DCT may impose on him a penalty—

- (a) of a sum not exceeding one and a half times the amount of tax payable by him; and
- (b) Where the total income of such person does not exceed the maximum amount on which tax is not chargeable, of a sum not exceeding Tk. 100.
- (c) Where any person having ownership or possession of any house property, whether used for residential or commercial purpose, receives any rent exceeding Tk. 25,000/- per month shall have to operate a bank account for the purpose of depositing rent and advance(if any) received from such house property. He shall also maintain a separate register for recording particulars of tenants and amount received or receivable from the tenants.

Penalty can be imposed by the DCT as per section 123(2) for any violation of this rule. The maximum penalty is 50% of tax payable on house property income or Tk. 5,000/- whichever is higher.

24.3 Penalty for failure to file return, statement, accounts or information :section 124

- (1) Where any person has, without reasonable cause, failed to file a return of income required by or under sections 75, 77, 89, 91 and 93, the DCT may impose upon such person a penalty amounting to 10% of tax imposed on last assessed Income subject to a minimum of Tk. 1,000, and in the case of a continuing default a further penalty of Tk. 50 for every day during which the default continues.

However, total amount of such penalty will not exceed Tk. 5,000 in case an individual who was not previously assessed. And in case of existing individual assessee maximum penalty will not exceed 50% of last assessed tax or Tk.1,000 whichever is higher.

- (2) For non-submission of statement under section 58,109 or 110 penalty of Tk.5,000/ + Tk. 1,000 per month for continuing default.
- (3) For non-submission of return u/s 75A or statement u/s 108 or information u/s 108A 10% of last assessed tax or Tk.5,000/ whichever is higher+ Tk. 1,000 per month for continuing default

Provided that where any person has, without any reasonable cause, failed to furnish information as required under section 113, the income tax authority may impose a penalty of Tk. 25,000 and in case of a continuing default a further penalty of Tk. 500 for each day.

24.4 Penalty for using fake TIN :section 124A

Where a person has, without reasonable cause, used TIN of another person or used fake TIN on a return of income or any other documents where TIN is required under IT Ordinance, the DCT may impose a penalty not exceeding Tk. 20,000 on that person.

24.5 Penalty for failure to pay advance tax :section 125

Where, in the course of any proceeding in connection with the assessment of tax under Chapter IX, the DCT is satisfied that any person has—

- (a) without reasonable cause, failed to pay advance tax as required by section 64; or
- (b) furnished under section 67 any estimate of tax payable by him which he knew, or had reason to believe, to be untrue, he may impose upon such person a penalty of a sum not exceeding the amount by which the tax actually paid by him falls short of the amount that should have been paid.

24.6 Penalty for non-compliance of notice: section 126

Where any person has, without reasonable cause, failed to comply with any notice issued under section 79, 80 or under section 83(1) or (2), the DCT may impose on him a penalty not exceeding the amount of tax chargeable on the total income of such person.

24.7 Penalty for failure to pay tax on the basis of return :section 127

Where, in the course of any proceeding under the Ordinance, the DCT is satisfied that any person has not paid tax as required by section 74, he may impose upon such person a penalty of a sum not exceeding 25% of such portion of the tax as has not been paid.

24.8 Penalty for concealment of income :section 128

- (1) Where, in the course of any proceeding under the Ordinance, the DCT, the AJCT, the CT(Appeals) or the Taxes Appellate Tribunal is satisfied that any person has, either in the said proceeding or in any earlier proceeding relating to an assessment in respect of the same income year-

- (a) concealed particulars of his income or furnished inaccurate particulars of such income; or
- (b) understated the value of any immovable property in connection with its sale or transfer with a view to evading tax, he or it shall impose upon such person a penalty of 15% of tax which would have been avoided had the income as returned by such person or as the case may be, the value of the immovable property as stated by him been accepted as correct:

Provided that if the concealment referred to in clause (a) and (b) of this sub-section or sub-section (2) is detected after a period of more than one year from the year in which the concealment was first assessable to tax, the amount of penalty shall increase by an additional 15% for each preceding assessment year.

(2) For the purpose of section 128(1), concealment of particulars of income or furnishing of inaccurate particulars of income shall include -

- (a) the suppression of any item of receipt liable to tax in whole or in part, or
- (b) showing any expenditure not actually incurred or claiming any deduction there from.

24.9 Penalty for default in payment of tax :section 137

- (1) Where an assessee is in default or is deemed to be in default in making payment of tax, the DCT may direct that, in addition to the amount of tax in arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.
- (2) Where, as a result of any final order, the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

24.10 Summary of penalties

In line with the above provisions, a summary of penalties may be drawn as below:

Sec.	Reasons of penalty	Authority	Amount of penalty
107HH	Non submission of statement of international transaction as per section 107EE	DCT	Maximum 2% of the value of such international transaction
123	for not maintaining accounts in the prescribed manner	DCT with approval from IJCT	Sum not exceeding one and a half times the amount of tax payable by him, however, such amount must not exceed Tk. 100 where the total income does not exceed the non-assessable limit, say, Tk. 2,50,000 Penalty can be imposed by the DCT as per section 123(2) for any violation of Rule-8A relating to house property income. The maximum penalty is 50% of tax payable on house property income or Tk. 5,000/- whichever is higher.
124	for failure to file return of income	DCT	10% of tax imposed on last assessed income subject to a minimum of Tk. 1,000 and in the case of a continuing default a further sum of Tk. 50 for every default days. However, total amount of such penalty will not exceed Tk. 5,000 in case an individual who was not previously assessed. And in case of existing individual assessee maximum penalty will not exceed 50% of last assessed tax or Tk.1,000 whichever is higher.
	For non-submission of statement under section 58,109 or 110	DCT	Tk.5,000/ + Tk. 1,000 per month for continuing default.
	For non-submission of return u/s 75A or statement u/s 108 or information u/s 108A	DCT	10% of last assessed tax or Tk.5,000/ whichever is higher+ Tk. 1,000 per month for continuing default

	for failure to furnish information as required under section 113	DCT	Tk. 25,000 and in case of a continuing default a further sum of Tk. 500 for each default day
124A	for using fake TIN	DCT with approval from IJCT	Sum not exceeding Tk. 20,000
124AA	for failure to verify TIN	DCT with approval from IJCT	Maximum Tk.50,000 [in certain circumstances not exceeding Tk.2,00,000]
125	for failure to pay advance tax	DCT with approval from IJCT	Sum not exceeding the amount by which the tax actually paid falls short of the amount that should have been paid
126	for non-compliance with notices	DCT with approval from IJCT	Sum not exceeding the amount of tax chargeable on total income
127	for failure to pay tax on the basis of return	DCT with approval from IJCT	Sum not exceeding 25% of the shortfall
128	for concealment of income	DCT, AJCT, CT(Appeals) or Taxes Appellate Tribunal	Sum of 15% of tax which would have been avoided had the income as returned by such person or as the case may be, the value of the immovable property as stated by him been accepted as correct Provided that if such concealment is detected after a period of more than one year, the amount of penalty shall increase by an additional 15% for each preceding assessment year
129A	For false audit report	DCT, AJCT, CT(Appeals) or Taxes Appellate Tribunal	Tk. 50,000 to Tk.2,00,000
129B	For submitting fake audit report	DCT, AJCT, CT(Appeals) or Taxes Appellate Tribunal	Tk.1,00,000 (Fixed)
137	for default in payment of tax	DCT	sum not exceeding the amount of tax in arrears

24.11 Bar to imposition of penalty without hearing :section 130

No order imposing a penalty under this Chapter shall be made on any person unless such person has been heard or has been given a reasonable opportunity of being heard. The assessee must be given a reasonable opportunity of being heard without which penalty proceedings would be invalid [Banaransi Das V. CIT ITR, 217]. However, where a DCT is succeeded by another, the succeeding DCT can pass a penalty order without providing such opportunity to the assessee if the case was fully heard by his predecessor and if not, the proceedings would be invalid [Calcutta Tanneries LTD. V. CIT ITR, 178].

24.12 Previous approval of IJCT for imposing penalty :sec 131

The DCT shall not impose any penalty under this Chapter without the previous approval of the IJCT except in the cases referred to in section 124.

24.13 Orders of AJCT, CT(Appeals) or Taxes Appellate Tribunal to be sent to DCT :section 132

The Taxes Appellate Tribunal or any income tax authority other than DCT himself making an order imposing any penalty under this chapter shall forthwith send a copy of the order to the concerned DCT, and thereupon all the provisions of the Ordinance relating to the recovery of penalty shall apply as if such order were made by the DCT.

24.14 Penalty to be without Prejudice to other liability :section 133

The imposition on any person of any penalty under Chapter XV shall be without prejudice to any other liability which such person may incur, or may have incurred, under the Ordinance or under any other law for the time being in force.

24.15 Revision of penalty on the basis of revised income: section 133A

Penalty will automatically be revised where it is imposed on the basis of income

Illustration-1

The Client provided you with the following information on income year 2017-18:

Particulars	Tk.
Taxable income from business	500,000
Taxable income from house property	600,000
Taxable income from other sources	350,000

He has also informed that income from house property was derived from a residential flat owned by him and the amount of house rent was not deposited in his bank account.

Requirements:

Compute the amount of penalty to be imposed under section 123 of the ITO, 1984, for non-compliance with rule 8A of the ITR, 1984.

Solution of illustration-1

Name of Assessee: ABC

Income Year: 2017-18

Assessment Year: 2018-19

Income Tax Computation

Particulars	Tk.
Taxable income from business	500,000
Taxable income from house property	600,000
Taxable income from other sources	350,000
Total Taxable Income	1,450,000

Slabs	Taxable Income (Tk.)	Rate	Tax (Tk.)
First	250,000	0%	-
Next	400,000	10%	40,000
Next	500,000	15%	75,000
Next	300,000	20%	60,000
Total	1,450,000		175,000

Investment Allowance & Tax Credit:

- (a) Actual Investment
 (b) 25% of (Total Taxable Income - income u/s 82C)
 (c) Maximum Limit
 (d) Allowable Investment Limit for Tax Credit - the lowest of (a), (b) and (c)

Tax Credit [(d) X 15%]

Income Tax Payable

B

C=A-B

Tk.

-
435,000
15,000,000
-
175,000
175,000/1,450,00X 600,000]
72,414
50% of tax payable on income from house property [50%X72,414] or Tk. 5,000
36,207 5,000
36,207
211,207

Tax Payable on Income from House Property

[175,000/1,450,00X
600,000]

Penalty u/s 123 for not depositing house rent into bank account as per rule 8A of the ITR, 1984:

50% of tax payable on income from house property

[50%X72,414] or
Tk. 5,00036,207
5,000

Whichever is higher

36,207

Total Tax Payable including Penalty

211,207

24.16 Offences and prosecution

IT Ordinance 1984 presents the rules for punishment through sections 164 to 168 due to specified types of offences committed by different classes of assessee. Such punishments in line with the offences are presented below:

No prosecution for an offence punishable under any provisions shall be instituted except with the previous sanction of the Board. The Board may compound such offence either before or after the institution of any proceedings or prosecution for a punishable offence.

Ref	Offence	Punishment
Sec 164	non-compliance of certain obligations	with imprisonment for a term which may extend to one year, or with fine, or both
165	false statement in verification	with imprisonment for a term which may extend to 3 years, but shall not be less than 3 months, or with fine, or both
165A	improper use of TIN	with imprisonment for a term which may extend to three years or with fine up to taka fifty thousand or both
165B	obstructing an income tax authority	with imprisonment for a term not exceeding one year, or with a fine, or with both
166	concealment of income	with imprisonment which may extend to five years, but shall not be less than three months, or with fine, or with both
166A	concealment of information	with imprisonment for a term which may extend to 3 years, or with fine, or with both
167	disposal of property to prevent attachment	with imprisonment for a term which may extend to 5 years, or with fine, or with both
168	disclosure of protected information	with imprisonment for a term which may extend to six months, or with fine



Chapter 25

Recovery of tax

Contents

Introduction
Examination context

Topic list

25.1	Notice of demand
25.2	Penalty for default in payment of tax
25.3	Certificate for recovery of tax
25.4	Method of recovery by Tax Recovery Officer(TRO)
25.5	Power of withdrawal of certificate and stay of proceeding
25.6	Validity of certificate for recovery not open to dispute
25.7	Recovery of tax through Collector of District
25.8	Recovery of tax through Special Magistrates
25.9	Other modes of recovery
25.10	Self-Assessment Questions

Introduction

Learning objectives

- Define the notice of demand.
- Identify the penalty for default in payment of tax.
- Define the certificate for recovery of tax.
- Identify the different methods and modes of recovery of tax.

Practical significance

A notice of demand in the prescribed form shall be served upon the assessee specifying the sum payable and the time within which it is payable where any tax is payable in consequence of any assessment made or any order passed under or in pursuance of the Ordinance.

An assessee in default or is deemed to be in default in making payment of tax may be directed to pay penalty in addition to tax in arrears. For recovery of tax from an assessee in default, a certificate for recovery of tax may be issued. The TRO upon receipt of that certificate can recover the tax in compliance with the method and mode of recovery as specified. Tax can also be recovered by the Collector of Districts or through Special Magistrates. There are other modes of recovery mentioned in this chapter.

Stop and think

Do you have the idea about the method and mode of recovery of tax by tax authority? Do you know about notice of demand and penalty for default in payment of tax?

Working context

The tax authority has some procedures to recovery of taxes. They can serve notice of demand, they can issue certificate for tax recovery. They can recover tax even through Collector of District or Special Magistrate. They have also other modes of recovery. So it is not easy for any assessee to get rid of from payment of tax. Besides an assessee in default or is deemed to be in default in making payment of tax may be penalized.

Accountants can suggest their clients to pay the tax on the basis of assessment in due time. They can aware the clients that making default in payment of tax may cause to penalty in addition to tax payable.

Syllabus links

The topics covered in this chapter are fundamental to your understanding of income tax.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the notice of demand.
- Identify the penalty for default in making payment of tax.
- Define the certificate for recovery of tax.
- Identify the method of recovery by TRO.
- Define the power of withdrawal of certificate and stay of proceeding.
- Define the recovery of tax through Collector of District.
- Define the recovery of tax through Special Magistrates.
- Identify other modes of recovery.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

25.0 RECOVERY OF TAX

Section overview

- Notice of demand can be served upon the assessee for recovery of tax
- Default assessee may be directed to pay penalty in addition to tax in arrears.
- Certificate of recovery may be issued for tax recovery from default assessee.
- Tax can also be recovered by the Collector of Districts or through Special Magistrates.
- There are different methods and modes of recovery of tax.

25.1 Notice of demand: section 135

- (1) Where any tax is payable in consequence of any assessment made or any order passed under or in pursuance of the Ordinance, the DCT shall serve upon the assessee a notice of demand in the prescribed form specifying therein the sum payable and the time within which, and the manner in which, it is payable, together with a copy of an assessment order.
- (2) Where the assessee upon whom a notice of demand has been issued under section 135(1) makes an application in this behalf before the expiry of the date of payment specified in the notice, the DCT may extend the time for payment or allow payment by installments subject to such conditions, including payment of interest on the amount payable, as he may think fit in the circumstances of the case.

- (3) If the sum payable is not paid within the time specified in the notice of demand issued under section 135(1) or, as the case may be, within the time as extended under section 135(2), the assessee shall be deemed to be in default.

However, where the assessee has presented an appeal under this Ordinance in respect of the assessment or imposition of the tax or of the amount thereof, the DCT shall treat the assessee as not being in default for so long as such appeal is not disposed of.

- (4) If, in a case where payment by installment has been allowed under section 135(2), the assessee commits default in paying any one of the installments within the time fixed thereof, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installments shall be deemed to have been due on the same date as the installment in respect of which default has actually been committed was due for payment.
- (5) Where an assessee has been assessed in respect of income arising outside Bangladesh in a country the laws of which prohibit or restrict the remittance of money to Bangladesh, the DCT shall not treat the assessee as in default in respect of that part of the tax which is due in respect of such amount of income as cannot, by reason of the prohibition or restriction, be brought into Bangladesh, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

EXPLANATION: For the purposes of this section, income shall be deemed to have been brought into Bangladesh if it has been or could have been utilized for the purposes of any expenditure actually incurred by the assessee outside Bangladesh or if the income, whether capitalized or not, has been brought into Bangladesh in any form.

25.2 Penalty for default in payment of tax: section 137

- a. Where an assessee is in default or is deemed to be in default in making payment of tax, the DCT may direct that, in addition to the amount of tax in arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.
- b. Where, as a result of any final order, the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

25.3 Certificate for recovery of tax: section 138

- a. When an assessee is in default or is deemed to be in default in making payment of tax, the DCT may forward to the TRO a certificate for recovery of the tax, under his signature specifying the amount of arrears due from the assessee; and such certificate may be issued notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.
- b. A certificate under section 138(1) may be forwarded to—
 - (a) the TRO within whose jurisdiction the assessee carried on his business or profession or the principal place of business or profession of the assessee is situate; or
 - (b) the TRO within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate; or
 - (c) the TRO who has jurisdiction in relation to the assessee whose income is assessable by the DCT forwarding the certificate.

25.4 Method of recovery by Tax Recovery Officer (TRO): section 139

- a. Upon receipt of certificate forwarded to him under section 138, the TRO shall proceed, in accordance with the rules made in this behalf by the Board, to recover from the assessee the amount specified in the certificate by one or more of the following modes, namely—
 - (a) attachment and sale, or sale without attachment, of any movable or immovable property of the assessee;
 - (b) arrest of the assessee and his detention in prison;
 - (c) appointment of a receiver for the management of the movable and immovable properties of the assessee.
- b. While recovering under sub-section (1) the amount specified in the certificate forwarded to him, the TRO may also recover in the same manner from the assessee in default, in addition to such amount, any cost and charges, including expenses on the service of any notice or warrant, incurred in the proceedings for the recovery of the tax in arrears.
- c. If the TRO to whom a certificate is forwarded under section 138 is not able to recover the entire amount by the sale of movable and immovable properties of the assessee within his jurisdiction, but has information that the assessee has property within the jurisdiction of another TRO, he may send the certificate to such other TRO or to the TRO within whose jurisdiction the assessee resides; and the TRO to whom the certificate has been so sent shall proceed to recover under Chapter XVI the amount remaining un-recovered as if the certificate was forwarded to him by the DCT.

25.5 Power of withdrawal of certificate and stay of proceeding: section 140

- a. The DCT shall have power to withdraw, or correct any clerical or arithmetical error in the certificate by sending an intimation to that effect to the TRO.
- b. Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Ordinance and, as a consequence thereof, the demand is reduced but the order is the subject matter of further proceedings under this ordinance, the DCT shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceedings remain pending.
- c. Where a certificate for recovery has been issued and subsequently the amount of outstanding demand is reduced as a result of appeal or other proceedings under this Ordinance, the DCT shall, when the order, which was the subject matter of such appeal or other proceeding, has become final and conclusive, amend the certificate or withdraw it, as the case may be.
- d. The DCT shall communicate to the Tax TRO any orders of cancellation, correction, stay of proceeding, withdrawal or amendment, as the case may be, of a certificate for recovery.

25.6 Validity of certificate for recovery not open to dispute: section 141

When the DCT forwards a certificate for recovery under section 138 to a TRO, it shall not be open to the assessee to dispute before the TRO the correctness of the assessment, and the TRO shall not entertain any objection to the certificate on any ground whatsoever.

25.7 Recovery of tax through Collector of District: section 142

- a. The DCT may forward to the Collector of District in which the office of the DCT is situate or the district in which the assessee resides or owns property or carries on business or profession, a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipts of such certificate, shall proceed to recover, from such assessee the amount specified therein as if it were an arrear of land revenue.
- b. Without prejudice to any other powers which the Collector of District may have in this behalf, he shall, for the purposes of recovery of the amount specified if the certificate for recovery forwarded to him under section 142(1), have the powers which a Civil Court has under the Code of Civil Procedure, 1908, for the purposes of recovery of an amount due under a decree.
- c. The DCT may, at any time, recall from the Collector of District a certificate forwarded to him under section 142(1) and upon such recall, all proceeding commenced in pursuance of the certificate shall abate. However, the recall of a certificate shall not affect any recoveries made by the Collector before the recall as if the certificate had not, to the extent of such recovery, been recalled; nor shall the recall of a certificate issued at any time prevent the recovery, by issue of a fresh certificate, of any amount which was recoverable at the time the certificate so recalled was issued.

25.8 Recovery of tax through Special Magistrates: section 142A

- a. Without prejudice to the provisions of section 142, the DCT may forward to a Magistrate of the First Class, specially empowered in this behalf by the Government, hereinafter referred to as "the Special Magistrate", a certificate under his signature specifying the amount of arrears due from the assessee, and the Special Magistrate shall, on receipt of such certificate, proceed to recover from the assessee the amount specified therein as if it were an arrear of land revenue and the Special Magistrate were a Collector of District.
- b. Without prejudice to any other powers of a Collector of District which the Special Magistrate may have in this behalf, he shall, for the purposes of recovery of the amount specified in the certificate for recovery forwarded to him under section 142A(1), have the powers which a Civil Court has under the Code of Civil Procedure, 1908, for the purposes of recovery of an amount due under a decree.
- c. The DCT may, at any time, recall from the Special Magistrate a certificate forwarded to him under section 142A(1) and upon such recall, all proceedings commenced in pursuance of the certificate shall abate. However, the recall of a certificate shall not affect any recoveries made by the Special Magistrate before the recall as if the certificate had not, to the extent of such recovery, been recalled; nor shall the recall of a certificate issued at any time prevent the recovery, by issue of a fresh certificate of any amount which was recoverable at the time the certificate so recalled was issued.

25.9 Other modes of recovery: section 143

(1) Notwithstanding the issue of a certificate for recovery of tax under section 138 or section 142, the DCT may also recover the tax in the manner provided in section 143(1A) or (2).

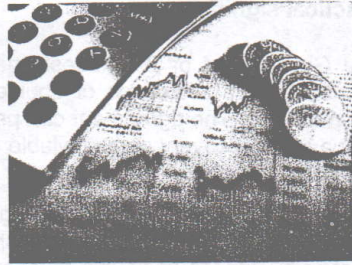
(1A) For the purpose of recovery of tax payable by an assessee which is not disputed in appeal to any appellate forum, the DCT may, with the previous approval of the Commissioner, after giving the assessee an opportunity of being heard, stop movement of any goods and services from the business premises of such assessee and also shutdown such business premises till the recovery of the tax referred to above or any satisfactory arrangement has been made for the recovery of such tax.

- a. For the purposes of recovery of any tax payable by an assessee, the DCT may, by notice in writing, require any person—
 - i. from whom any money or goods is due or may become due to the assessee, or who holds, or controls the receipt or disposal of, or may subsequently hold, or control the receipt or disposal of, any money or goods belonging to, or on account of, the assessee, to pay to the DCT the sum specified in the notice on or before the date specified therein for such payment; or stop the transfer of that goods to the assessee or the placement of that goods under the disposal of the assessee until the amount of tax mentioned in the notice has been paid or a satisfactory arrangement has been made with the DCT for payment of such tax or
 - ii. who is responsible for payment of any sum to the assessee classifiable as income of the assessee under the head 'Salaries', to deduct from any payment subsequent to the date of the notice, any arrear of tax due from the assessee, and to pay the sum so deducted to the credit of the Government.
- b. A person who has paid any sum as required by section 143(2)(a) shall be deemed to have paid such sum under the authority of the assessee and the receipt by the DCT shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the sum specified in the receipt.
- c. A person who has deducted any sum as required by section 143(2)(b) shall be deemed to have deducted the tax under section 50 and the relevant provisions of Chapter VII shall apply accordingly.
- d. If the person to whom a notice under section 143(2) is sent fails to make payment or to make deductions in pursuance of the notice, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and proceedings may be taken against him for realization of the amount as if it were an arrear of tax due from him; and the provisions of this Chapter shall apply accordingly.
- e. The DCT may at any time amend or revoke any notice issued under section 143(2) or extend the time for making any payment in pursuance of such notice.
- f. In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of Bangladesh, the DCT may proceed to recover the amount due by such process.
- g. The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under section 143(7).

Explanation: For the removal of doubts, it is hereby clarified that the several modes of recovery specified in Chapter XVI are neither mutually exclusive nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the DCT, if for any special reasons to be recorded by him, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode.

25.10 Self-assessment question

Discuss briefly the salient features of the various provisions of the Income tax Ordinance, 1984 relating to recovery of tax by the Tax Authorities.



Chapter 26

Double taxation relief

Contents

Introduction
Examination context

Topic list

26.1	Double taxation – some basic concepts
26.2	Agreement of avoidance of double taxation
26.3	Relief In respect of income arising outside Bangladesh
26.4	Methods of avoiding double taxation? How the methods work
26.5	Tax treaty
26.6	Some other concepts used in DTAA

Introduction

Learning objectives

- Define the agreement to avoid double taxation.
- Recognize the tax relief in respect of income arising outside Bangladesh.

Practical significance

The Government of Bangladesh may enter into an agreement with the Government of any other country for the avoidance of double taxation and the prevention of fiscal evasion with respect to income taxes. The agreement can provide some provisions for implementation such as relief from the tax payable, recovery of tax leviable under the Ordinance and under the corresponding law in force in that country etc.

If any person who is resident in Bangladesh in any year proves that he has paid tax on any income for any income year outside Bangladesh in any country with which there is no reciprocal agreement for relief or avoidance of double taxation, tax shall be deducted from the tax payable by him under the Ordinance, subject to such rules as the NBR may make in this behalf, a sum equal to the tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the said country, whichever is the lower.

Stop and think

Do you realize the impact of agreement to avoid double taxation? Do you know the list of countries with which Bangladesh has agreement to avoid double taxation? Do you know about the relief in respect of income arising outside Bangladesh?

Working context

Accountant can help their clients by giving advice with procedures to avoid double taxation. They should have the updated knowledge on various agreements for avoidance of double taxation with different countries. Based on the provisions of these agreements they can support their clients in this regard.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Define the agreement to avoid double taxation.
- Recognize the provision mentioned in agreement to avoid double taxation.
- Identify the relief in respect of income arising outside Bangladesh.
- List the name of countries with whom Bangladesh has agreement for avoidance of double taxation.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

26.0 DOUBLE TAXATION RELIEF INCLUDING TAX TREATIES

Section overview

- ➔ For the avoidance of double taxation, Bangladesh enters into agreement with many countries.
- ➔ Double taxation agreement also prevents the fiscal evasion with respect to income taxes.
- ➔ Under double taxation relief system, the payable tax will be the sum equal to the tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the foreign country, whichever is the lower.

26.1 Double taxation – some basic concepts

What is double taxation?

Double taxation means taxing the same income twice, once in the home country and again in the host country. For example, a Bangladeshi citizen may have income arose in India which is once taxed in India and again in Bangladesh.

How does double taxation arise?

Double taxation may arise in the following two ways:

- (i) The jurisdictional connections used by different countries may overlap with each other. For example, Mr. Rolex, a resident under the Bangladesh Income Tax Ordinance, 1984 has to pay tax on his total world income in USA also as citizen of USA (Residential jurisdiction).
- (ii) The taxpayer or his income may have connections with more than one country. For example, Mr. Rahamat, a Bangladeshi citizen, has income from Romania on investments and dividend income from France in addition to income from Bangladesh. He has to pay tax on his total world income in Bangladesh and also on income earned in Romania and France (Source jurisdiction).

What are the broad objectives of Bangladesh DTAA?

The major objectives of Bangladesh DTAA are as follows:

- (i) To obtain a more effective relief from double taxation compared to relief allowed under unilateral measures.
- (ii) To create a favorable climate for the inflow of FDI in Bangladesh.
- (iii) To make special tax incentives provided by Bangladesh fully effective for the taxpayers of the capital exporting countries.
- (iv) To prevent tax evasion.
- (v) To foster long term, mutually beneficial economic relationship with others specially the developed countries.

Which model of avoidance of double taxation agreement is followed in Bangladesh?

There are two models of avoidance of double taxation agreement viz., UN Model and OECD Model. Bangladesh generally follows UN model of avoidance of double taxation agreement which consists of the following 29 articles:

Article	Heading	Main Contents
1.	Scope of the convention	To whom applicable
2.	Taxes covered	Specific taxes covered
3.	General definitions	Person, company, enterprise, international traffic, competent authority
4.	Resident	Resident of a contracting state
5.	Permanent establishment (PE)	What constitutes /does not constitute PE
6.	Income from immovable property	Immovable property and income there from
7.	Business profits	Determination and taxation of profits arising from business carried on through PE
8.	Shipping, inland waterways, transport and air transport	Place of deemed accrual of profits and mode of taxation thereon
9.	Associated enterprises	Enterprises under common management and taxation of profits arising there from
10.	Dividends	Definition and taxation of dividends
11.	Interest	Definition and taxation of interest

Article	Heading	Main Contents
12.	Royalties	Taxation of royalties, country where taxable
13.	Capital gains	Taxation of capital gains, country where taxable
14.	Independent personal services	Types of services , country where taxable
15.	Dependent personal services	Definition, country where taxable
16.	Directors' fees and remuneration for top level managerial officials	Definition, country where taxable
17.	Income earned by entertainers and athletes	Types of activities, mode and country where taxable
18.	Pension and social security payments	Country where taxable
19.	Remuneration and pensions in respect of Government servants	Type of remuneration, country where taxable
20.	Payment received by students and apprentices	Taxation and related exemptions
21.	Other income	Residual article to cover incomes not covered under articles, mode of taxation and country where taxable
22.	Capital (tax on wealth)	Mode of taxation, country where taxable
24.	Non-discrimination	Equitable basis of taxing nationals and citizens of foreign state
25.	Mutual Agreement Procedure	Where taxation is not as per provisions of the convention, a person may present his case to competent authority of respective states
26.	Exchange of information	Competent authorities to exchange information for carrying out the provisions of the convention, methodology for the same
27.	Diplomatic agents and consular officers	Privileges of this category to remain unaffected
28.	Entry into force	Effective date from which the convention comes into force,
29.	Termination of treaty	Time and notice period mode

Besides the above clauses, DTAA normally contain a Protocol or Memorandum, which is like a supplement to the Treaty. This is attached normally at the end of the treaty, which clarifies borderline issues, and also rectifies unintended omissions.

The other model, OECD model, is mostly followed amongst 29 OECD countries. The fundamental difference between these two is essentially one; UN model is based on taxing the income on source principle whereas OECD model is on resident principle. Since FDI flows from developed to developing countries, the latter tends to benefit the developed countries.

What impact double taxation in general, would have on global economic activities?

- (a) It hampers free flow of capital and technology across borders and
- (b) It becomes a prohibitive burden on concerned taxpayers leading to decline in foreign investments.

What are the effects of DTAA in Bangladesh?

The effects of an agreement entered into by virtue of section 144 of Income Tax ordinance 1984 would be:

1. If no tax liability is imposed under the Ordinance, the question of resorting to DTAA would not arise. No provision of DTAA can possibly fasten a tax liability which is not imposed by the Ordinance. The treaties with all intent and purpose, can lessen the vigor of double taxation cannot however, enhance it.

2. In case of a difference in the provisions of the Ordinance and those of the DTAA, to the extent they are more beneficial to the provisions of the Ordinance, will override the ordinance which is the fundamental concept in treaty override.

What are the differences between double tax relief and double tax avoidance?

Double tax relief means granting of relief in respect of income on which income tax has been paid under the Bangladesh tax laws and also in other country.

Double taxation avoidance means avoidance of double taxation on income under the tax laws of the two countries. One important distinction between the two is that in the case of avoidance of double taxation the assessee does not have to pay the tax first to claim refund later but he would be obliged to do so in the case of relief against double taxation.

The other distinction is that no benefit is given unless otherwise stipulated in the DTAA but relief can be awarded unilaterally against double tax even when there exists no DTAA. Section 145 of Bangladesh Income Tax Ordinance, 1984 empowers the DCT to grant such relief, subject to such rules as the NBR may make in this behalf.

Firstly, as per section 144 of Income Tax Ordinance 1984, where Bangladesh Govt. has entered into any DTAA, the provisions of that agreement would normally apply to the case of an assessee covered by such agreement. However if the relevant provisions in the Bangladesh Income Tax Ordinance are more favorable, then to that extent he can seek applications of the provisions of the Ordinance as against those of the agreement.

26.2 Agreement to avoid double taxation: section 144

This section confers the right to GOB to enter into an agreement with the government of any other country for the avoidance of double taxation and the prevention of fiscal evasion with respect to income tax and may, by Gazette Notification, make such provisions as may be necessary to implement the agreement.

Income tax policy section of NBR is entrusted to negotiating the Double Taxation Avoidance Agreement (DTAA) with foreign countries to promote foreign direct investment in Bangladesh. DTA is an agreement between two countries seeking to avoid double taxation by defining the taxing rights of each country with regard to cross border flows of income, providing for tax credits or exemptions to eliminate double taxation.

At present, Government of Bangladesh has entered into Double Taxation Avoidance Agreement (DTAA) with 34 countries as stated below:

Sl. No	Name of the country	SRO		Date of effect in Bangladesh (assessment year commencing on or after)
		No.	Date	
1.	U.K	227-L/80	08/07/1980	01/07/1978
2.	Singapore	124-L/82	21/04/1982	01/01/1980
3.	Sweden	382-L/83	19/10/1983	01/07/1984
4.	Korea	433-L/84	02/10/1984	01/07/1984
5.	Canada	247-L/85	06/06/1985	01/07/1982
6.	Pakistan	221-L/88	11/07/1988	01/01/1980
7.	Romania	348-L/88	23/11/1988	01/07/1989
8.	Sri Lanka	365-L/88	10/12/1988	01/07/1989
9.	France	2-L/89	04/01/1989	01/07/1989

10.	Malaysia	67-L/90	15/02/1990	01/01/1982
11.	Japan	235-L/91	06/08/1991	01/07/1992
12.	India	45-L/93	27/02/1993	01/07/1993
13.	Germany	1-L/94	01/01/1994	01/01/1990
14.	Netherlands	267-L/94	14/09/1994	01/07/1995
15.	Italy	63-L/97	12/03/1997	01/07/1980
16.	Denmark	72-L/97	17/03/1997	01/07/1997
17.	China	114-L/97	13/05/1997	01/07/1998
18.	Belgium	11-L/98	14/01/1998	01/07/1998
19.	Thailand	222-L/98	07/09/1998	01/07/1999
20.	Poland	39/L/99	03/03/1999	01/07/2000
21.	Philippines	56/L/2004	04/03/2004	01/07/2004
22.	Vietnam	301-L/2004	18/10/2004	01/07/2005
23.	Turkey	308/L/2004	31/10/2005	01/07/2004
24.	Norway	20-L/2006	12/02/2006	01/07/2006
25.	Indonesia	60-L/2007	20/04/2007	01/07/2007
26.	USA	71-L/2007	10/05/2007	01/07/2007
27.	Switzerland	52-L/2010	23/02/2010	01/07/2008
28.	Oman(only for airlines business)	16-L/2009	02/02/2009	01/07/2009
29.	Myanmar	313-L/2012	18/10/2012	01/07/2012
30.	Mauritius	122-L/2012	09/05/2012	01/07/2012
31.	Saudi Arabia	103-L/2012	15/04/2012	01/10/2011
32.	UAE	313-L/2012	05/09/2012	01/07/2012
33.	Belarus	189-L/2014	08/07/2014	01/07/2014
34.	Kuwait	Not yet	19/02/2014 (date of signing)	Not yet

26.3 Relief In respect of income arising outside Bangladesh: section 145

This section empowers DCT to allow relief to an assessee in respect of any income accrued or arisen in any other country with which Bangladesh does not have DTAA. The assessee must prove that he has suffered tax on that income by way of deduction or otherwise, then the DCT may, subject to such rules as the NBR may make in this behalf, deduct from the tax payable by the assessee a sum equal to tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax at the said country, whichever is lower. Average rate of tax means the rate arrived at by dividing the amount of tax calculated on the total income by such income.

26.4 Comparative picture of Double Tax Avoidance and tax relief

Double tax avoidance and tax relief as presented in sections 144 and 145 respectively in IT Ordinance 1984 have conceptual difference which is presented in the table below:

Reference	Income	Heading of the section	Tax advantages
Section 144 and Schedule 7	Arises from those countries with whom there is DTAA	Avoidance of Double Taxation	Tax calculated as per rate in the agreement, but it will not be more than the tax amount calculated on the basis of the average tax rate applicable in Bangladesh (considering foreign income in total income) on the foreign income.
Section 145	Arises from those countries with whom there is no DTAA	Relief	Tax calculated on such doubly taxed income at the average rate of tax of Bangladesh or the average rate of tax of the said country, whichever is lower subject to such rules as the NBR may make in this behalf.

Illustration 1:

Mr. Nazim, a Bangladeshi resident, received interest income of Tk. 450,000 from Indonesia after deduction of 10% of tax at source during the year ending on 30 June, 2018. His other income in Bangladesh amounts to Tk. 300,000 for the same year. Compute the net tax liability of Mr. Nazim.

Mr. Nazim
Assessment year: 2018-19

Heads of income	Amount (Tk.)
Income from Bangladesh sources	300,000
Foreign income (Tk. 450,000/1-0.1)	<u>500,000</u>
Total income	<u>800,000</u>

Computation of tax liability:

Tier of income		Rate	Amount (Tk.)
On first	Tk. 250,000	Nil	Nil
On next	400,000	10%	40,000
On balance	150,000	15%	22,500
	Tk. 800,000		<u>62,500</u>

Thus, the average tax rate in Bangladesh is 7.81% (Tk. 62,500 / Tk. 800,000 × 100). So, the maximum limit of tax credit will be Tk. 39,050 (Tk. 500,000 × 7.81%) though he already paid Tk. 50,000 tax in Indonesia. Mr. Nazim will have to pay Tk. 23,450 (Tk. 62,500 – Tk. 39,050) as remaining tax in Bangladesh.

Illustration 2:

Mrs. Asma Jahan records the income for the income year 2017-18 as income from Bangladesh Tk. 2,000,000; income from Sweden Tk. 600,000; income from Singapore Tk. 400,000; and income from Russia Tk. 1,000,000. The income tax rate for foreigners in Sweden is 30%, but he has paid tax @ 25% as per DTAA. 20% tax has been paid in Russia for the income generated in Russia and 25% tax has been paid in Singapore for the income generated in Singapore. Show the application of double taxation relief due to these foreign incomes for the assessment year 2018-19.

Mrs. Asma Jahan
Computation of total income
For the assessment year 2018-19

Particulars	Tk.	Tk.
1. Income from Bangladesh		2,000,000
2. Income from Sweden		600,000
3. Income from Russia [No DTAA]		1,000,000
4. Income from Singapore		400,000
Total income		<u>4,000,000</u>

Mrs. Asma Jahan
Computation of tax payable in Bangladesh

Particulars	Rate	Tk.
On first 3,00,000	0%	-
On next 4,00,000	10%	40,000
On next 5,00,000	15%	75,000
On next 6,00,000	20%	1,20,000
On balance 22,00,000	25%	5,50,000
Total Tax		<u>7,85,000</u>
Less: Double taxation relief (Note-5)		<u>1,90,000</u>
Net tax payable		<u>5,95,000</u>

Notes:

1. Average tax rate in Bangladesh = $[(7,85,000/4,000,000) \times 100] = 19\%$
2. No tax relief from income from Russia (as there is no DTAA and as NBR not yet prescribed any rule as per section 145 in this behalf)
3. Tax relief from income from Sweden (DTAA exists) = $(6,00,000 \times 25\%) = \text{Tk. } 1,50,000$. However, maximum limit is Tk. 1,14,000 $(6,00,000 \times 19\%)$.
4. Tax relief from income from Singapore (DTAA exists) = @ 25% or average tax rate i.e. 19% whichever is lower = $(4,00,000 \times 19\%) = \text{Tk. } 76,000$
5. Total double taxation relief is = Tk. $(1,14,000 + 76,000) = \text{Tk. } 1,90,000$.

26.5 Methods of avoiding double taxation

There are four methods of avoiding double taxation. These are –

- (i) Unilateral relief
- (ii) Bilateral relief
- (iii) Multilateral relief
- (iv) Non-tax treaties

Unilateral relief

Under this system whether the income is subject to tax abroad or not is immaterial, relief is given by way of tax credit for the tax paid abroad.

Under Section 145 of the Income Tax Ordinance 1984, tax credit method is followed. A resident in Bangladesh who has paid income tax in any country with which Bangladesh does not have a treaty for the relief or avoidance of double taxation is allowed credit against his Bangladesh income tax for an amount equal to Bangladesh coverage rate i.e. average rate or the foreign rate whichever is lower, applied to the doubly taxed income. This is done as follows:

- a. Where the foreign tax is equal to Bangladesh tax, full amount of foreign tax will be given credit.
- b. Where the foreign tax exceeds the Bangladesh tax, the liability to Bangladesh tax is nil. However, no refund in respect of the excess amount is allowed.
- c. Where foreign tax is less than Bangladesh tax, the difference would be payable by the taxpayer.

The basic principle to remember is that credit/relief will never exceed the Bangladesh income tax on the concerned income calculated at average rate.

Bilateral relief

It may take one of the following two forms:

Firstly, the treaty may apply exempting method, the country in question refraining from exercising jurisdiction to tax a particular income.

For instance, the country of source where PE is located is assigned an exclusive jurisdiction to tax the profits of the establishment. In turn it may agree to refrain from exercising its jurisdiction to tax the owner of these profits.

Alternatively, the treaty may provide relief from double taxation by redacting the tax ordinarily due in one or both of the contracting states on that income which is subject to double taxation.

For instance, the country, which is the source of a dividend, often agrees to reduce the withholding rate normally applicable to dividends paid to non-resident and the country of residence agrees to give tax credit or similar relief for the tax paid in the source country. In such a case, both the countries exercise the rights to jurisdiction, while mutually agreeing for adjustments, many DTAAs combine both the methods of relief.

Multilateral treaties

These are similar to bilateral treaties achieved through agreement between many countries i.e. EEC.

Non-tax treaties

These are not direct tax treaties but are of friendship, co-operation cultural exchange, political and diplomatic relations, but which consequently may reflect upon tax matters.

26.6 Tax treaty

What is tax treaty and how does it work?

'Treaty' as commonly understood is a formally concluded and ratified agreement between independent nations. Tax treaties are generally a matter of bargain and prolonged negotiations centering on economic interests of the countries involved.

What is the scope of tax treaties in determining jurisdiction?

Normally tax treaty between two countries covers-

(i) Persons (ii) Taxes (iii) Territory (iv) Time

The treaty, generally applies to residents of the contracting states. Each country retains the power to tax its citizens and residents on their total world income (Status jurisdiction) and tax others, non-citizens, non-residents only on their income in the country (Source jurisdiction). However, the treaty provisions protect the taxpayer from suffering double taxation on the same income.

How does a treaty become a law?

The agreement entered into becomes a part of domestic law only when it has sanction of the constitutions of the nations which are parties to it. The power to legislate is conferred on our Parliament and therefore, the Government has authority to enter into DTAA. However, all treaties are also required to be formally approved by official gazette notification.

26.7 Some other concepts used in DTAA

Treaty override

The executive of the state has been given rights under our Constitution to enter into DTAA's. This is an executive power exercisable by the Govt. like legislative and judicial powers. As the power to enter into DTAA's comes from the Constitution, the relevant article thereof will have the effect of the DTAA overriding the Ordinance, as the executive also has to exercise jurisdiction keeping in mind DTAA obligations and commitments made thereon. It is now an undisputed proposition that DTAA overrides the Ordinance.

Tax havens

Tax haven nations are those with nil or moderate level of taxation and/or offering liberal tax incentives for export activities, shipping business. These tax havens attract investments as the corporate tax rate is low. They may also exempt dividends and capital gains on the transfer or exchange of movable assets like shares and sometime immovable properties like land, building, plants etc. Besides tax haven countries may also pursue absolute secrecy and easy exchange control policies to attract offshore investors.

There are two types of tax haven

1. Nil tax haven
2. Nil tax outside haven countries

Treaty shopping

Just as the domestic law can, sometimes, be used more than fairly to the advantage of a taxpayer, the DTAA too can be exploited through popularly known means of "Treaty Shopping". A non-resident seeking shelter under a DTAA is still open to domestic assessment when the tax authorities feel that, he is taking an undue advantage of provisions of the DTAA or has structured the commercial arrangement in such a way so as to avail the DTAA benefit otherwise not available to him. The authorities may then deny the benefits of the DTAA. The most common form of Treaty Shopping is setting up of a dummy enterprise. This is set up by say, Company A, in one of the Contracting States, to avail DTAA benefits, which the company, not being a resident of either Contracting States, would otherwise not be entitled to. In such a case, the Court can lift the corporate veil.

Attribution Rule

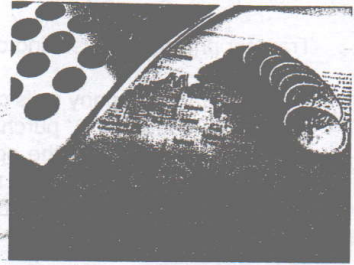
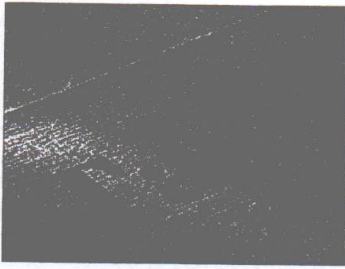
The basic requirement to bring the business profits to tax they should be capable of being attributable to the Permanent Establishment (PE) or residency. The question to be asked is the enterprise trading with the country on a regular basis? If yes, what is the nature of establishment in Bangladesh? If the income arises out of the business activity carried on in that state and if it can be attributed to the PE, it can be taxed to that extent of attribution. Certain established and accepted rules are to be followed in the determination of such income. Generally the expenses that can or cannot be considered will depend upon the taxation laws of each state.

Force of attraction rule

It means all income arising from all source in a country where the foreign enterprise maintains a PE is subject to tax in that country irrespective of whether the said income is attributable to the PE or not. Therefore, profits arising from transactions outside PE are also taxable. As per this rule not only the profits attributable to the sale of same or similar kind of goods is brought to tax and any other income from sources within the country are also regarded income attributable to the PE.

Students should carefully note the following main objectives of DTAA:

- a) Any income earned by a resident of a contracting state in the other contracting state cannot escape from tax assessment in both the contracting states.
- b) Any income earned by a resident of a contracting state in the other contracting state cannot be taxed in both the contracting states.
- c) Conditions of taxability and rates of tax payable of a resident of a contracting state in respect of incomes from various heads earned in the other contracting state.



Chapter-27

Transfer pricing

Contents

Introduction
Examination context

Topic list

27.1	Concept of transfer pricing
27.2	Introduction of transfer pricing regulations in Bangladesh
27.3	Meaning assigned to certain connotations relating to transfer pricing in tax law
27.4	Arm's length price the basis of determining transfer pricing
27.5	Factors to be considered in judging uncontrolled international transaction
27.6	Reporting of information relating to international transaction
27.7	Assessment of transfer pricing cases
27.8	Penalties in transfer pricing regulation

27.1 Concept of transfer pricing:

Transfer pricing is the setting of prices of goods & services sold between controlled legal entities.

If a subsidiary company sells goods to a parent company; the cost of those goods is the transfer price. Suppose a company 'A' purchases goods for Tk. 1,000 and sells it to an associate company B for Tk. 2,000 who then sells in the open market for Tk. 4,000. Had A sold it directly in open market it could earn a profit of Tk.3,000. By routing through B the profit is restricted to Tk. 1,000. The profit of Tk. 2,000 is shifted to country of B. The goods are transferred on an arbitrary price (transfer price) and not open market price.

The expression "transfer pricing" thus refers to prices of transaction between associated enterprises which may take place under different condition from those between two independent enterprises. The effect of transfer pricing is that the parent company or a subsidiary tends to declare insufficient taxable income or excessive loss in transaction because corporate tax rate varies between countries. Multinational companies tend to reduce their tax burden by shifting profit of countries where tax rate is higher to country where tax rate is lower.

Transfer pricing may occur in transaction of (a) goods (b) service (c) use of property (including intangible property). This may occur:

- (e) Between two related enterprises.
- (f) Through transaction in foreign currency.

Most countries including Bangladesh have taken policy of 'arm's length price' to combat transfer pricing.

27.2 Introduction of transfer pricing regulations in Bangladesh:

- (a) Transfer pricing regulation was incorporated in the IT Ordinance, 1984 through Finance Act, 2012.
- (b) Chapter XIA (section 107A to 107J) of the Income Tax Ordinance, 1984 contains the transfer pricing regulations. Subsequently rule 71, 72, 73, 74, 75&75A was inserted in the Income Tax Rules, 1984.
- (c) According to the provision of section 107J, provisions of chapter XIA will be applicable from the date notified in official Gazette. This notification is issued vide notification no: 161-ain/aikor/2014 dated 26/06/2014, putting transfer pricing regulations into effect for transactions from 1st July, 2014.
- (d) The regulations are promulgated beforehand with the following objectives:
 - (i) Give time to taxpayers to prepare records accordingly;
 - (ii) Give tax authority time to build up database;
 - (iii) Give tax authority time to train tax officials & capacity building.
- (e) According to the regulation transfer pricing will be applicable:
 - (i) On international transaction between associated enterprises;
 - (ii) When either or both of the enterprises are non-resident.

27.3 Meaning assigned to certain connotations relating to transfer pricing in tax law:

Section 107A defines terms used in transfer pricing regulation. The terms are-

- (a) "arm's length price"[sub-section (1);
- (b)"associated enterprise" [sub -section (2)];
- (c) "enterprise" [sub-section (3)];

(d) "independent enterprise" [sub-section(4)];

(e) "International transaction" [sub -section (5)] as in the nature of –

(i) Purchase;

(ii) Sale;

(iii) Lease of tangible or intangible property;

(iv) Provision of services;

(v) Lending money;

(vi) Borrowing of money;

(vii) Any other transaction having a bearing on profits, income, losses, assets;

(f) "permanent establishment" [sub-section(6)];

(g) "Property" "[sub-section(7)];

(h) "Record" "[sub-section(8)];

(i) "Transfer Pricing Officer" "[sub-section(9)];

(j) "Transaction" "[sub-section(10)];

(k) "Uncontrolled transaction" "[sub-section(11)].

27.4 Arm's length price > the basis of determining transfer pricing:

(1) Section 107B states international transaction to be determined on the basis of "arm's length price".

(2) Section 107C states different methods of computing "arm's length price". The following methods are to be applied for computation of "arm's length price":

(a) Comparable uncontrolled price method;

(b) Resale price method;

(c) Cost plus method;

(d) Profit split method;

(e) Transaction net margin method;

(f) Any other method.

(3) The manner to be followed in applying the method is prescribed in rule 70. These are:

(a) Comparable uncontrolled price method:-

(i) the price charged or paid for property transferred or services provided in an uncontrolled transaction or a number of transactions of comparable circumstances is identified;

(ii) if the price so identified differs from the price of the international transaction, the differential amount is calculated;

(iii) the price of international transaction is then adjusted by the said differential amount;

(iv) the adjusted price under sub-clause (iii) is taken to be the arm's length price of the property transferred or services rendered in the international transaction.

(b) Resale price method: -

(i) the price at which the said property or service is resold to an independent enterprise is identified;

- (ii) the price, as identified in sub-clause (i), is reduced by a comparable normal gross margin;
 - (iii) the price so arrived at is then adjusted for other unique costs (such as customs duty) associated with the purchase of the property or services;
 - (iv) the price so arrived at is then adjusted to take into account the material differences (differences that could materially affect the gross margin in open market condition) such as functions performed, risks involved, assets employed, time gap between the original purchase and the resale and accounting practices between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;
 - (v) the adjusted price under sub-clause (iv) shall be taken to be the arm's length price of the property purchased or the service obtained in the international transaction.
- (c) Cost plus method: -**
- (i) the direct and indirect costs incurred in the supply of property or the provision of services, hereinafter referred to as cost base, are determined;
 - (ii) a comparable profit mark-up (based on comparable accounting policies) is identified;
 - (iii) appropriate adjustment is then made to the comparable profit mark-up adjusted to take into account the material differences (differences that could materially affect the mark-up in open market condition) such as functions performed, risks involved, assets employed, contractual terms and market conditions between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions.
 - (iv) the adjusted profit mark-up under sub-clause (iii) is then added to the cost base;
 - (v) the sum so arrived at is taken to be the arm's length price of the property transferred or services provided in the international transaction.
- (d) Profit split method: -**
- (i) the combined profit, arising from international transaction or transactions and divisible among the associated enterprises, is identified.
 - (ii) the combined profit is then divided among the associated enterprises by using the following approaches:
 - a. each of the associated enterprises is allocated a basic return based on the basic functions (manufacturing, distribution, service provision etc.) each enterprise performed and determined by reference to market returns earned by independent enterprise in similar transaction. This basic return does not usually account for the return that would be generated by any unique and valuable assets possessed by the associated enterprises. The residual profit (which may be attributable to such unique assets), calculated by deducting the sum of basic returns allocated to associated enterprises from the combined profit, is then apportioned to the associated enterprise based on their relative contribution and taking into consideration how independent enterprises in similar circumstances would have divided such residual profit; or
 - b. basic return is not allocated to the associated enterprises; the combined profit is divided among the associated enterprises based on the relative contribution of each the associated enterprises to that profit;
 - (iii) the profit thus allocated to the assessee under sub-clause (ii) is taken to be the arm's length price.
- (e) Transactional net margin method: -**
- the net profit margin earned by the associated enterprise from the international transaction with the associated enterprise is computed having regard to an appropriate base such as costs, sales or assets;

- (i) the net profit margin earned by an independent enterprise or enterprises from comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;
- (ii) appropriate adjustment is then made to the net profit margin referred to in sub-clause (ii) to take into account the differences, that can materially affect the net profit margin, between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;
- (iii) the adjusted net profit margin under sub-clause (iii) is then applied to the base as referred to in sub-clause (i) to arrive at the arm's length price in relation to the international transaction.

27.5 Factors to be considered in judging uncontrolled international transaction:

- (1) The factors to be considered in judging uncontrolled international transaction is described in rule 71. These are as follows:
 - (a) the characteristics of property, services or intangible properties involved in the transaction:
 - (i) the case of tangible property: physical features, quality and reliability, availability, volume and timing of property transferred;
 - (ii) in the case of services provided: the nature and extent of the services;
 - (iii) in the case of intangible property: the type of intangible, the form of transaction, the expected benefits, the duration of protection, the degree of protection, etc.;
 - (b) the functions performed, the risks assumed and the assets employed, especially the functions, risks and assets that are materially significant in determining the price or margin in relation to the international transaction;
 - (c) the contractual terms (whether or not such terms are formal or written) dictating the allocation of responsibilities, risks and benefits between enterprises involved in the international transaction;
 - (d) economic circumstances, that affect the international transaction and uncontrolled transactions, including geographic location, the size and level of markets; the extent of competition in the market, the availability of substitute goods and services, the purchasing powers of consumers, government orders and policies and the timing of the transaction;
 - (f) Any other factors that have material effect on the international transaction and uncontrolled transaction.
- (2) An uncontrolled transaction shall be deemed to comparable to an international transaction if:
 - (i) there are no material differences in respect of cost, price or margin between the transactions being compared or between the enterprises undertaking such transactions; or
 - (ii) reasonably accurate adjustments can be made to eliminate any material differences in the transactions.
- (3) In analyzing the comparability, data relating to the relevant financial year (in which the international transaction has been entered into) shall be considered.

Provided that data relating to a period prior to the financial year may also be considered if such data bears such facts which could have an influence on the analysis of comparability.

27.6 The factors to be considered for the most appropriate method:

The factors to be considered for the most appropriate method are described in rule 72:

- (a) the nature and class of the international transaction, and of enterprises entering into the international transaction;
- (b) the comparability factors (industry, functions, risks, contractual terms, market level) that are materially significant in determining the price or margin in relation to the international transaction;

- (c) the quality (availability, coverage, validity and reliability) of relevant data;
- (d) the reliability of assumptions in the method;
- (e) the sensitivity of results in the deficiency in data and assumptions;
- (f) the extent to which the reliable and accurate adjustments can be made to eliminate the differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions.

27.7 Reporting of information relating to international transaction:

According to section 107E every person having international transaction will keep information and maintain record as per rule 73 as under:

- (a) Ownership profile of the multinational group in which the assessee enterprise is a member. Profile should include information on groups global organizational structure, showing in details the name, location, legal status and country of tax residence of the enterprises in the group with whom the assessee enterprise have international transactions, and ownership linkages among them;
- (b) business profile of the group including the line of business, industry dynamics, and market and economic environment in which the group operates, and the business model and strategies of past, present and future;
- (c) brief business profiles of each of the member of the group;
- (d) information on the business relationship (purchase and sells of goods, provision of services, use of assets and intangibles etc.) among the members of the groups;
- (e) consolidated financial statement of the group;
- (f) profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh, including tax and VAT registration number, IRC & ERC numbers, address, locations of activity centers etc.;
- (g) business profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh including the line of business, industry dynamics, and market and economic environment in which the assessee enterprise operates, and the business model and strategies of past, present and future of the assessee enterprise;
- (h) brief description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction;
- (i) financial statements of the assessee enterprise and each of the associated enterprises operating in Bangladesh;
- (j) information on economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee enterprise and each of the associated enterprises operating in Bangladesh either for whole business or for any segment or line of product;
- (k) details of all transactions with the associated enterprises;
- (l) contracts, terms and agreements of the transactions with associated enterprises;
- (m) segment financial statements with respect to the transactions with associated enterprises;
- (n) the manner of choosing tested party including the rationale for the choice;
- (o) details of comparable including the manner in which the comparable have been screened and the adjustment made to achieve comparability;
- (p) details of comparability analysis;
- (q) the manner of choosing tested party including the rationale for choice;

- (r) information on transfer pricing method chosen considered for determining the arm's length price including the justification stating why the method is considered most appropriate;
- (s) records showing the calculations and workings regarding the determination of the arm's length price/margin including the explanation of any assumption;
- (t) any assumption, policy and price negotiations which may have an effect on the determination of the arm's length price;
- (u) information on any adjustment made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;
- (v) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

The information specified above shall be supported by authentic documents, which may include the following:

- (a) Official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;
- (b) Reports of market research studies carried out and technical publications brought out by institutions of national or international repute;
- (c) Price publications including stock exchange and commodity market quotations;
- (d) Published accounts and financial statements relating to the business affairs of the associated enterprises;
- (e) Agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions;
- (f) Letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;
- (g) Documents normally issued in connection with various transactions under the accounting practices followed.

The information and documents specified shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

According to section 107EE, every person, having international transaction is required to furnish information regarding international transaction in prescribed form. Such form is prescribed in rule 75A. This information in prescribed form is to accompany annual tax return. The form prescribed in rule 75A is as follows:

STATEMENT OF INTERNATIONAL TRANSACTIONS

(Section 107EE of the IT Ordinance, 1984 and Rule 75A of the IT Rules, 1984)

A. Particulars of the Assessee:

1. Name of the Assessee:
2. TIN:
3. (a) Circle: (b) Taxes Zone:
4. Assessment Year:
5. Income Year: From to

B. Particulars of International Transactions [see section 107A (5)]

PART-I

Tangible property of revenue and capital nature transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Stock in trade/ raw materials						
Other (specify)						

Rent, royalties and intangible property related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Rent						
Royalties (for the use of patents, trademark etc.)						
License of franchise fees						
Intangible property or rights (acquired or disposed of)						

Services related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Treasury related services						
Management and administrative services						
Sales and marketing services						
Research and development						
Software and ICT services						
Technical and engineering services						
Commissions						
Logistics						
Asset management						
Other services (specify)						

Financial transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Interest						
Sale of financial assets (including factoring, securitization and securities)						
Lease payments						
Securities lending (fees and compensation payment)						
Insurance and reinsurance						
Guarantees						
Other services (specify)						

Any other international transaction of revenue nature not reported above:

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%

Total of PART-I

PART-II

Interest bearing loans, advances and investments (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts owed by the assessee				
Amounts owed to the assessee				

Current accounts and similar items (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts of accounts payable				
Amounts of accounts receivable				

I Designation of
Solemnly declare that to the best of my knowledge and belief the information given in this Form is correct and complete.

Place:

Date:

Signature

(Name in block letters)

Designation and Seal

Instructions

1. Enter the total value of international transaction for each item in the appropriate column.
2. Enter the appropriate Transfer Pricing Method Code(s) (TPM Code) in PART-I from the list given below (see section 107C).

Transfer Pricing Method (TPM)

Comparable Uncontrolled Price
Cost Plus
Resale Price
Profit Split
Transactional Net Margin Method
Others

Code

1
2
3
4
5
6

The '%' column for each item in PART-I represents the total value of international transactions of that item as the percentage (up to two decimal places) of the total value of all transactions under the item.

According to section 107F, every person who has entered into international transaction with one or more persons total value of which in an income year exceeds taka 30 million is required to furnish a report from a chartered accountant. This report, in prescribed form, is to accompany his annual tax return. The prescribed form as per rule 75 is as follows:

1. The accounts and records of _____ (name and address of the assessee with TIN) relating to the international transactions entered into by the assessee during the income year ending on _____, _____ has been examined by me.
2. It appears from our examination of the accounts and records that proper information and documents, as are required by the Income Tax Ordinance, 1984, have been kept by the in respect of the international transaction(s) entered into by the assessee.
3. The particulars required to be furnished under section 107F are given in the Annexure to this Form.
4. In my opinion and to the best of my information and according to the explanations given to me, the particulars given in the Annexure to this form are true and correct.

Signature

Name:

Address:

Membership No:

Place: _____

Date: _____

27.7 Assessment of transfer pricing:

The chronology of processing of international transaction by tax authority is stated in section 107D. According to section 107D:

- (a) DCT with prior approval of NBR refers a case to TPO for determination of arm's length price.
- (b) TPO will then on approval of NBR proceed to determine arm's length price in relation to international transaction. He will then serve notice to taxpayer to produce evidences in support international transaction.
- (c) TPO will then determine arm's length price in relation to international transaction considering evidences produced and all other related information he will send his report to the DCT.
- (d) DCT will then assess total income & taxes payable on the basis of report of TPO and all other relevant matter.

27.8 Penalties in transfer pricing regulation:

1. According to section 107G income tax authority may impose a penalty up to 1% of international transaction for failing to furnish information or not maintaining records.
2. According to section 107H income tax authority may impose a penalty up to 1% of international transaction for failing to comply with requisition of a notice.
3. According to section 107HH income tax authority may impose a penalty up to 2% of the value of such international transaction for non-submission of statement of international transaction as per section 107EE
4. According to section 107I income tax authority may impose a penalty up to BDT 3 lakh for failing to furnish report
5. of chartered accountant as per section 107F.

Question No. 1

The following notes to the accounts pertaining to related party disclosures have been extracted from annual report of 2017 of MNC Ltd., a large FMCG manufacturing company of Bangladesh, where all the related parties are situated abroad except Bangladesh Prime Financing Ltd:

Related party transactions during the Year

Name of related parties	Nature	Nature of Transactions	For y/e: 30 June 2016	For y/e: 30 June 2017
			Taka	Taka
Singapore Quality FMCG Inc.	Shareholder	Dividend payment	10,000,000	11,000,000
		Trademark	100,000	100,000
Bangladesh Prime Financing Ltd.	Shareholder	Dividend payment	5,000,000	5,500,000
Prime Communications Solutions Ltd.	Associate	Purchase of IT service and software maintenance	1,200,000	1,100,000
Singapore Quality Consultancy PLC	Group entity	Management and professional service fee	200,000	200,000
		IT Support Cost	170,000	210,000
Singapore Civil PLC	Group entity	Engineering service fee	130,000	110,000
Singapore Machineries PLC	Group entity	Professional service fee	220,000	180,000
Singapore Asset Management Ltd.	Group entity	Asset management service fee	3,200,000	2,500,000

Receivables/ (payables) with related parties

Name of related parties	Nature	Nature of Transactions	As at 30 June 2016	As at 30 June 2017
			Taka	Taka
Singapore Quality FMCG Inc.	Shareholder	Accounts payable	(40,000)	(30,000)
Prime Communications Solutions Ltd	Associate	Accounts receivable	-	-
Singapore Quality Consultancy PLC	Accounts payable	Accounts payable	(260,000)	(117,000)
	Group entity	Accounts receivable	65,000	33,000
		Accounts payable	(300,000)	(200,000)
Singapore Civil PLC	Group entity	Accounts receivable	112,000	320,000
		Accounts payable	(38,000)	(55,000)
Singapore Machineries PLC	Group entity	Accounts receivable	-	-
		Accounts payable	(54,000)	(21,000)
Singapore Asset Management Ltd	Group entity	Accounts receivable	-	-
		Accounts payable	(320,000)	(371,000)

Requirement:

- Prepare Statement of International Transactions of MNC Ltd. for the assessment year 2017-18 in accordance of Section 107EE of the Income Tax Ordinance, 1984 and Rule 75A of the Income Tax Rules 1984.
- Since MNC Ltd. regularly incurs a handful number of transactions with foreign related parties for the purpose of its business, they want professional advice with regard to agreement with PE and related information and documentation. Draft a letter in reply of the request to CFO, Mr. A. Kibria seeking your advice on factors to be included in agreement with AE and documentation to prepare to deal with the new provisions of Income Tax law relating to foreign transactions with associated enterprises.

Answer to question No. 1 (a):

STATEMENT OF INTERNATIONAL TRANSACTIONS

(Section 107EE of the IT Ordinance, 1984 and Rule 75A of the IT Rules, 1984)

A. Particulars of the Assessee:

1. Name of the Assessee:
2. TIN:
3. (a) Circle:
4. Assessment Year:
5. Income Year:

(b) Taxes Zone:

B. Particulars of international transactions:

PART-I

Tangible property of revenue and capital nature transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Stock in trade / raw materials	-	-	-	-	-	-
*Other (specify)	-	-	-	-	-	-

Rent, royalties and intangible property related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Rent	-	-	-	-	-	-
Royalties (for the use of patents, trademark etc.)	1,00,000	-	-	-	-	-
License of franchise fees	-	-	-	-	-	-
Intangible property or rights (acquired or disposed of)	-	-	-	-	-	-

Services related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Treasury related services	-	-	-	-	-	-
Management and administrative services	200,000	-	-	-	-	-
Sales and marketing services	-	-	-	-	-	-
Research and development	-	-	-	-	-	-
Software and ICT services	1,370,000	-	-	-	-	-
Technical and engineering services	350,000	-	-	-	-	-
Commissions	-	-	-	-	-	-
Logistics	-	-	-	-	-	-
Asset management	3,200,000	-	-	-	-	-
*Other services (specify)	-	-	-	-	-	-

Financial transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Interest	-	-	-	-	-	-
Sale of financial assets (including factoring, securitization and securities)	-	-	-	-	-	-
Lease payments	-	-	-	-	-	-
Securities lending (fees and compensation payment)	-	-	-	-	-	-
Insurance and reinsurance	-	-	-	-	-	-
Guarantees	-	-	-	-	-	-
*Other financial services (specify)	-	-	-	-	-	-

Any other international transaction of revenue nature not reported above:

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
	-			-	-	-

Total of PART-I

5,220,000

PART-II**Interest bearing loans, advances and investments (figures in thousand taka)**

Item	Opening Balance	Increase	Decrease	Closing balance
Amounts owed by the assessee	-		-	-
Amounts owed to the assessee	-	-	-	-

Interest-free loans, advances and investments (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing balance
Amounts owed by the assessee	-	-	-	-
Amounts owed to the assessee	-	-	-	-

Current accounts and similar items (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing balance
Amounts of accounts payable	739,000	170,000	-	909,000
Amounts of accounts receivable	265,000	-	191,000	74,000

I, _____, Designation Chief Financial Officer of MNC Ltd., solemnly declare that to the best of my knowledge and belief the information given in this form is correct and complete.

Place: Dhaka

Date :

Signature
(Name in Block Letters)

Designation and Seal

Answer to Question No. 1 (b)

Date:

Mr. Mr. A. Kibria
Chief Executive Officer
MNC Ltd.

Subject: Requirements on entering agreement, pricing, information and documentation relating to foreign transactions with associated enterprises

Dear Sir,

Please refer to our meeting on 31 May 2018 at our office when you sought our guidelines on factors to be included in agreement with AE, information to be collected from AE and documentation to prepare to deal with the provisions of Income Tax laws relating to foreign transactions with associated enterprises. Considering our discussion, we are providing below necessary guidelines on aspects as stated above.

Factors to be included in the agreement with AE:

1. Description of services: Description of the exact nature of services to be rendered by the AE should be incorporated in the agreement. Such information may be detailed in a separate appendix to the agreement and updated annually if services are to be availed on an ongoing basis.
2. Initiation and expiry date: The effective date of agreement and the expiry date should be clearly mentioned. In case there is any change in nature of services or price, the same can be agreed by way of addendum to the agreement.
3. Roles and responsibilities of MNC Ltd. and AEs: The agreement should define the roles and responsibilities of each party including but not limited to provision of services by AEs, assurance that services meets the agreed standards, how will the services be requisitioned etc.

Information to be collected from AE:

The following information is required to be collected from AE and make it ready to deliver to the tax authority:

1. Financial statements of the AE, along with consolidate financial statement of the group.
2. Details of cost incurred by AE for rendering services
3. Details of cost allocated to MNC Ltd. along with the basis of cost allocation
4. Analysis undertaken to substantiate the arm's length nature of the mark up charged on services rendered.
5. Documents to substantiate those services have actually been received from AE.

Documents for tax authority:

The following documents should be maintained and presented for audit conducted by tax authority

1. Copy of the agreements entered into by MNC Ltd. with the AEs
2. Copy of the invoices
3. Documents evidencing receipt of services by MNC Ltd.
4. Documents evidencing benefits received from receipt of services from AEs
5. Documents evidencing that services rendered by AEs are not duplicative
6. Documents evidencing cost incurred by AEs for rendering of services

We expect that, our above guidelines shall suffice your queries so as to enable you to take necessary preparation on TP issues. Thank you very much for taking us to your confidence.

Sd/=

Worked example 2 with transfer pricing issue

XYZ Pharmaceuticals Limited, a pharmaceutical manufacturing company, commenced its operations in 2012. The audited profit & loss statement of the company for the year ended 30 June, 2018 is as follows:

Particulars	Taka ('000)
Net sales	12,000
Cost of Sales	(10,200)
Gross Profit	1,800
Other Operating Income	1,600
Administrative Expenses	(14,500)
Selling and Marketing Expenses	(74,500)
Other Operating Expenses	(1,000)
Profit from Operations	(86,600)
Financial Expenses	(25,000)
Foreign exchange gain/ (loss)	(2,200)
Interest income	12
Profit/ (Loss) before Tax	(113,788)

Other information:

- (ii) Depreciation booked in the accounts during the year Tk. 30 million. As per tax law depreciation for the year would be Tk. 50 million.
- (ii) Royalty charged to expense during the year was Tk. 9.60 million (8% of net sales).
- (iii) Expense incurred for samples distributed was Tk. 5 million.
- (iv) Of the total employees of the company 10 employees' salaries include perquisites on an average Tk. 525,000 each, 10 employees' salaries include perquisites on an average Tk. 400,000. No other employee's salaries have perquisites more than Tk. 475,000.
- (v) Provision for gratuity made during the year was Tk. 1,000,000, whereas gratuity paid during the year was Tk. 900,000.
- (vi) The company contributed to the employees' provident fund during the year Tk. 1,500,000. The provident fund is duly recognized by concerned Commissioner of Taxes.
- (vii) There was entertainment expense of Tk. 250,000 during the year.
- (viii) Financial expense includes Tk. 2 million for the interest paid on the foreign loan received from its overseas parent company. The rate of interest is LIBOR+4.50. The transfer pricing officers of NBR have assessed that the arm's length rate of interest of the similar loan should LIBOR+3.0 [Assume the LIBOR rate was 0.50]

Required:

- (i) Compute the total income of the company for the year.
- (ii) Compute the net tax liability of the company for the year (refer section 82C(4), if applicable).

Solution:

I Computation of total income of XYZ Pharmaceuticals Ltd. for the assessment year 2018-19:

	Taka ('000)	Taka ('000)
Net profit (loss) before tax as per accounts		(113,788)
Add:		
Accounting depreciation	30,000	
Royalty expenses as per accounts	9,600	
Samples as per accounts	5,000	
Excess perquisites (525000-475,000) X 10	500	
Provision for gratuity made during the year	1,000	
Entertainment expenses as per accounts	250	
Interest on foreign loan as per accounts	<u>2,000</u>	
		48,350
Less:		
Tax depreciation	50,000	
Samples expenses (Note-1)	1,600	
Gratuity paid during the year	900	
Interest on foreign loan (2000/5% X 3.5%)	1,400	
Entertainment expenses (Note 2)	Nil	
Royalty expenses (Note-3)	<u>Nil</u>	
		(53,900)
Total income		(108,238)

Notes:

- 2% on 5 crore, 1% on next 5 crore and 0.5% on balance Tk. 2 crore of turnover (Rule 65c)
- As there no taxable profit before entertainment allowance, nothing will be allowed (Rule 65)
- Royalty is allowed up to 8% of disclosed net profit. As disclosed net profit is negative so no royalty will be allowed (Sec 30h).

ii. Net tax liability of the company

Higher of the following:

Tax on calculated profit or loss

Nil

Tax on turnover as per sec 82C(4) (12 Crore X 0.60%)

Tk. 720,000

Therefore, the net tax liability of the company for the AY 2018-19 will be

Tk. 720,000

Worked example 3 with transfer pricing issue

XYZ Bangladesh Ltd. a 100% Chinese equity-held 'A' category private company, operating as export-oriented(deemed) security label products factory in Savar EPZ and enjoying 10-year tax holiday, have related party transactions. You are an ACA, working as deputy to the CA Firm's tax partner who specializes in TP. Tax partner advised XYZ as to the appropriate methods for pricing international transactions. He filed tax return of XYZ Bangladesh Ltd. for income year ended 30.06.2018 together with Statement u/s 107EE of the Ordinance, Rule 75A; selected extracts are:

Particulars of International Transactions (XYZ Bangladesh Ltd. For y/e 30.06.2018) PART – I**Tangible property of revenue and capital nature transactions**

Item	Expense ('000)	TPM Code	%	Revenue('000)	TPM Code
Export of F/G	150,000	TNMM	15%		
Import of R/M	50,000	TNMM	10%		
Import of Machineries	200,000	OTHER 75%			

Service related transactions

Item	Expense ('000)	TPM Code	%	Revenue('000)	TPM Code
Management Fee	10,000	TNMM	100%		

PART – II

Interest free loans, advances and investments (figures in '000 taka)

<u>Item</u>	<u>Opening Balance</u>	<u>Increase</u>	<u>Decrease</u>	<u>Closing Balance</u>
Due to Assessee	----	5,000	---	5,000

Current accounts and similar items (figures in thousand taka)

<u>Item</u>	<u>Opening Balance</u>	<u>Increase</u>	<u>Decrease</u>	<u>Closing Balance</u>
Accounts Payable	35,000	50,000	--	85,000
Accounts Receivable	65,000	50,000		115,000

Exports of F/G to AE are same „label products“. The import of R/M includes semi-finished label papers of high specifications which are available only with one Chinese supplier; the AE in question has global volume contract with Chinese Supplier. Machineries include state-of-the-art printers from proprietary sources. Management fee is shared cost of technical team sitting in China under a Management Service Agreement with assessee. „Due to Assessee“ includes remittance made to Paris trading office of the company to support its initial set-up cost (opened in June 2017). This new trading office is set up to secure nominations for its label products from EU customers who source apparel products from Bangladeshi suppliers. DCT referred the case for y/e 30.06.2018 to TPO u/s 107D. TPO served a notice to XYZ Bangladesh Ltd. u/s 107D (2) requiring to explain:

- Why assessee relied on TNMM method and 'OTHER' method for reported/selected transactions with AEs?
- Why TP adjustment should not be given on management fee paid to AE in Shanghai?
- Why TP adjustment should not be given on interest-free remittance to AE in Paris?
- Why TP adjustment should not be given for interest on overdue receivable from AEs?

Long working with TP specialist tax partner brought you experience on TP advisory. NBR formed TP cell comprising of proven high-caliber officials from department. TP regulations are new in Bangladesh. NBR advertised for a short-term consultant (preferably CA) to seek technical supports to the cell in these initial days. You got this one-year engagement at NBR to work as Consultant at TP Cell, to begin from September, 2018.

Requirements:

- Your tax partner wants you to draft explanations in ref to TPO notice. Cover reasons why 'TNMM' and 'OTHER' methods are used by XYZ Ltd in its reported transactions as opposed to other methods.
- Draft explanation for your partner covering the reasons as to why TP adjustments should not be given for reported management fee, interest-free remittance and overdue receivable.
- During incumbency at NBR, you will support TP team with your findings identifying potential adjustments involving critical returns. Assume, you are tasked by TP head to provide findings on a return filed by your ex-Tax partner. Answer your position covering ethical threats, if any, and your possible actions.

Solution 3(a)

A TP study on XYZ Ltd was carried out, ready for submission to tax authority. At XYZ Ltd., operating margin is taken as profit level indicator (PLI) when using TNMM method. Rule 70(1) of the IT Rules, 1984 was taken as guidance and thus the selected methods were decided for given international transactions. TNMM uses objective measures of profitability, called Profit Level Indicators (PLI) to evaluate whether the price of controlled transactions is at arm's length and so it was taken as appropriate for finished goods sale (export), raw material import and Management fee. At XYZ Ltd. when using **Transactional net margin method** (TNMM) for determining selling price of 'label products', PBIT margin on export sales from sale transactions with AEs were compared with the PBIT margin on sale from export transaction with unrelated customers. Adjustments for difference in functional analysis between transactions with AEs and unrelated parties were also given.

Similarly, for purchase of materials from AEs, PBIT margin on cost from transactions of purchase raw material transactions with AEs were compared with the PBIT margin on cost from transactions of purchase raw material transactions with unrelated suppliers. As the raw materials semi-finished, of high specifications and they are sourced from selected Chinese suppliers under the global volume contract with AEs in Shanghai, the scope of comparability with uncontrolled transactions were less. However, as the r/m is procured under global volume contract with AE, the price of raw material received by XYZ Ltd. was already competitive.

TNMM was used for Management fee also on the ground of simplicity. When doing this, the PBIT margin-Management fee to AE at XYZ Ltd. was compared with the PBIT margin-Management fee relationship practiced by unrelated competitors in the same industry sector (Label Products). Such comparison revealed the size of management fee at XYZ is lower than that practiced at uncontrolled competitors.

Application of TNMM for export sale, r/m purchase and management fee thus made the operations simple, objective and so the prices are duly in arm's length. Net margin under TNMM is less affected by transactional difference than in the case with price under CUP method. Net margin is also a better indicator than gross margin which is used in the case of CPM and RPM. PSM better suits service industry.

Use of 'OTHER' method was used for transactions with AEs for purchase of machineries. These are state-of-the-art machines, purchased from proprietary sources to maintain the quality of label products. As the source is 'proprietary' and having no other alternative, no ALP pricing methods could be applied but the price of the supplier was taken as it is, i.e., the method falls under 'OTHER'. Section 107C(f) allows using 'any other method' where it can be demonstrated that none of the specific five methods can be reasonably applied to determine ALP for given international transaction. XYZ had to resort to section 107C(F) for 'machinery import from proprietary source.

Solution 3(b)

Rule 70(1) was duly complied when determining the ALP methods for the three items of international transactions. Further grounds why TP adjustments should not be given on those three items:

Management Fee to AE in Shanghai, China

- i) Management fee is paid to AE using TNMM method which is the most reliable measure on merit, duly being backed by Rule 70(1) of the IT Ordinance.
- ii) Management fee paid is still lower than size of the item practiced by the uncontrolled competitors in the same industry of label products export, revealed by TNMM approach.
- iii) Pricing method has been determined after a detailed TP study, submitted with tax return.
- iv) The payment is well documented and the amount within the limit of section 30(h) of ITO, 1984.
- v) The amount paid to AE is towards sharing of the cost of the technical team in China (head quarter), well documented, and under a formalized agreement duly approved by BIDA. The management fee recovers proportionate cost of AE without any savings, as revealed by TP study FAR analysis.

Remittance to AE in Paris

- i) New trading office in Paris was set up to market, coordinate and secure nominations of the EU retainers for the assessee's label products, which will be a direct increase of assessee's export.
- ii) AE in Paris, being non-resident, cannot make any local borrowing there. The only option for initial set up cost was funding from the assessee. This remittance is also approved by Bangladesh Bank.
- iii) Fund remitted to start the set-up could otherwise be treated as 'capital expenditure' whereas the remittance has been recognized as repayable loan to AE. This means better protection to the assessee.
- iv) Financial support made to AE comes under the ordinary business practice of assessee's operations. This is a one-off assistance and amount is not very large. Assessee's business is not 'lending'. Therefore, there cannot be any interest charge on the funds remitted.
- v) The decision to support AE in Paris was duly approved by the BOD for greater business cause.

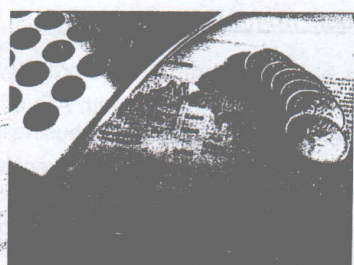
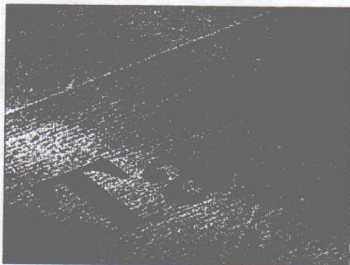
Receivable from AE

- i) Receivable with AE is in the ordinary course of assessee's business operations, not extra-ordinary.
- ii) Receivable is not alone with AE, other parties also have receivable balance as per payment term. Such receivable is unavoidable in business.
- iii) The annual increase figure of receivable is for an amount which is equally off-set by the payable to AE. The net effect on assessee is well balanced.
- iv) There is no term of interest charge on the receivable with the AEs when sale was done.

Solution 3(c)

As NBR consultant, I shall be in the character of a PAIB. Working on a file of my ex-tax partner's client at my incumbency at TP cell may be an issue of 'conflict of interest' which may create threats to objectivity and other fundamental principles, such as, integrity, confidentiality and good reputation of my profession. I shall be subject to NBR contractual terms, policies and procedure of NBR and the Govt. Secrecy law. I shall be exposed to 'familiarity threats' for my long association with ex-tax partner plus a threat of 'self-interest' for the likely slide of my image if I fail to do a just job at TP cell.

The threats are significant. No safeguard seem to be relevant. I have to a firm position. As a TP Cell consultant, I shall draw an ethical wall both in fact and appearance under the circumstances. I shall remain objective, confidential at all times and shall not allow any undue influence including any familiarity pressure in my mind to override my professional judgment. I shall not allow conflict of interest but shall disclose to my TP cell boss the fact of my relationship with ex-tax partner and the tasked file in hand. If I am still tasked to do the job, on merit, I shall bring change in my conduct with my ex-tax partner during my incumbency at TP Cell. Major threats as mentioned could thereby be managed well.



Chapter 28

Refunds

Contents

Introduction
Examination context

Topic list

28.1	Requirement to issue refund voucher
28.2	Entitlement to refund
28.3	Claim of refund for deceased or disabled persons
28.4	Correctness of assessment not to be questioned
28.5	Refund on the basis of appeal order
28.6	Form of claim and limitation
28.7	Interest on delayed refund
28.8	Adjustment of refund against tax

Introduction

Learning objectives

- Recognize the requirement to issue refund voucher
- Define the entitlement of refund.
- Recognize the claim of refund for deceased or disabled persons
- Define the refund on the basis of orders in appeal
- Calculation of interest on delayed refund
- Define the adjustment of refund against tax

Practical significance

When any amount of tax is refundable as per tax law the DCT shall issue refund voucher unless such refund is set off against tax. The refund shall be entitled when the amount of tax paid exceeds the properly chargeable tax or when income of one person included in income of another person.

Where through death, incapacity, insolvency, liquidation or other cause, a person, is unable to claim or receive any refund due to him, the legal representative shall be entitled that refund. In case of refund on the basis of orders in appeal, the amount is payable within 30 days. Interest is also payable if there is delay in payment of refund more than 2 months from the claim of refund. In certain cases the refundable amount can be adjusted against tax.

Stop and think

Excess payment of tax is refundable or adjustable against tax. Do you think that refundable tax can be received or adjusted even in some cases with interest?

Working context

Excess payment of tax by a taxpayer may be incurred in many ways. Refund of such tax is a legal right for that taxpayer. Accountants support to calculate and claim the refundable tax on behalf and in favour of the clients that is sometime very essential.

Detailed knowledge on the refund procedures can help accountants to provide this service to their clients.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the requirement to issue refund voucher.
- Mentioned who are entitled to refund.
- Recognize the claim of refund for deceased or disabled persons.
- Recognize the refund on the basis of appeal order.
- Calculate interest on delayed refund.
- Mention how refund is adjustable against tax.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have historically prepared well for this area of the syllabus. Better prepared candidates are able to perform well in the more difficult areas.

28.0 REFUNDS

Section overview

- ➔ DCT shall issue refund voucher when any amount of tax is refundable unless such refund is adjustable against tax.
- ➔ Legal representative of a disable person shall be entitled to get refund.
- ➔ Refund on the basis of appeal order is payable within 30 days of receiving such revised order from the DCT.
- ➔ Interest is also payable in case of delay in payment of refund @ 7.5%.
- ➔ Refundable amount can be adjusted against tax.

28.1 Requirement to issue refund voucher: section 135(1A, 1B and 1C):

- (1) Where any amount of tax is refundable in consequence of any order, except an order passed under section 83A and 83AA in pursuance of the Ordinance, the DCT shall specify in the notice referred to in section 135(1) the sum refundable to the assessee together with a copy of an assessment order and a refund voucher unless such refund is set off against tax as per provision of section 152 [section 135(1A)].
- (2) The DCT shall not set off without giving the assessee an opportunity of being heard and in that case refund voucher for the amount due for refund, if any, shall be issued within a period not exceeding 30 days from the date of assessment [section 135(1B)].
- (3) Where the DCT fails to issue refund voucher for any refund due to an assessee within the time specified in section 135, such failure on the part of the DCT shall be construed as misconduct [section 135(1C)].

28.2 Entitlement to refund: section 146

- (1) A person, who satisfies the DCT or other authority appointed by the Government in this behalf that the amount of tax paid by him or on his behalf, or treated as paid by him or on his behalf, for any year exceeds the amount with which he is properly chargeable under the Ordinance for that year, shall be entitled to a refund of any such excess.
- (2) Where the income of the person is included under any provision of the Ordinance in the total income of any other person, such other person alone shall be entitled to a refund under chapter XVIII in respect of such income.

28.3 Claim of refund for deceased or disabled persons: section 147

Where through death, incapacity, insolvency, liquidation or other cause, a person, is unable to claim or receive any refund due to him, his legal representative, or the trustee, guardian or receiver, as the case may be, shall entitled to claim or receive such refund for the benefit of such person or estate.

28.4 Correctness of assessment etc. not to be questioned: section 148

In any claim for refund under this chapter, it shall not be open to the claimant to question the correctness or validity of any assessment or other matter which has become final and conclusive or to ask for a review of the same, and the claimant shall not be entitled to any relief on any such issue raised except refund of the tax paid in excess.

28.5 Refund on the basis of appeal order: section 149

Where, as a result of any order passed in appeal or other proceeding under this Ordinance, refund of any amount becomes due to an assessee, the DCT shall refund the amount, unless set off against tax or treated as payment of tax as per provisions of section 152 to the assessee, within 30 days from the date on which the refund has become due without his having to make any claim in that behalf.

28.6 Form of claim and limitation: section 150

Every claim for refund under sections 146 and 147 shall be made in prescribed form under Rule 36 and verified in such manner as may be prescribed.

Rule 36: Form of Application for Refund of Income Tax

I, _____ of _____ hereby declare that my total income computed in accordance with the provisions of the Income Tax Ordinance, 1984, during the income year ending on relating to the assessment year _____ amounted to taka, _____ that the total income tax chargeable in respect of such total income is taka _____ and that the total amount of income tax paid or treated as paid under sections 48(2) and 62 is taka _____

I, therefore, request that a refund of taka _____ may be allowed to me.

(Signature)

I hereby declare that I am resident / non-resident in Bangladesh and that what is stated in this application is correct.

Date _____

(Signature)

Notes:

1. The application should be accompanied by return of income in the specified form unless it has already been filed.
2. Where the application is made in respect of interest on securities, the application shall be accompanied by the certificates required under section 58.
3. The application for refund shall be made to the DCT of the Circle in which the applicant is chargeable directly to tax, otherwise to the DCT under whose jurisdiction the applicant resides, unless there is a special Refund Circle, in which case the application shall be made to the DCT of that Circle.
4. A non-resident person shall make his application for refund to the DCT who has jurisdiction over him. If the non-resident tax-payer is assessed through a statutory agent, the application for refund shall be made to the DCT who has jurisdiction over that statutory agent.
5. The application may be presented by the applicant in person or through a duly authorized agent or may be sent by registered post.

28.7 Interest on delayed refund: section 151

Where a refund due to an assessee is not paid within 2 months of the date of the claim for refund, or refund becoming due consequent upon any order passed in appeal or other proceeding under this Ordinance interest at the rate of 7.5% per annum shall be payable to the assessee on the amount of refund from the month following the said two months to the date of issue of the refund.

Illustration

Mr. Rahman made a claim of refund on 15th March, 2015 for Tk. 150,000. There would not be any interest payment if the refund is issued within 15th May, 2015 i.e. within two months.

Let us assume that the refund was issued on 15th May, 2016. Now interest at 7.5% on Tk. 150,000 for a complete year (from 16th May of 2015 to 15th May of 2016) i.e. Tk. 11,250 after disregarding two months, would be payable to the assessee in addition to refund of Tk. 150,000.

Let us further assume that the original assessment in the above case was made on 30th April, 2013 against which the assessee preferred appeal and finally won the case in Taxes Appellate Tribunal. Accordingly DCT passed the refund order on 10th July, 2015 but payment was issued on 9th April 2016.

Here, the assessee does not have to claim the refund but DCT is under an obligation to issue refund within one month of the Tribunal order. Since it has not been done, interest is payable from 10th August, 2015 i.e. after the month of becoming due, to the actual date of refund i.e. 9th April, 2016.

Interest payable, eight months @ 7.5% per annum on Tk. 150,000 = Tk. 7,500.

28.8 Adjustment of refund against tax: section 152

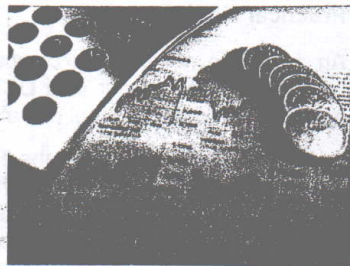
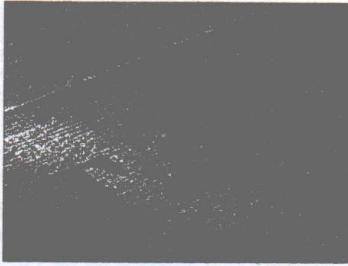
Where, under the provisions of this Ordinance, the Income-tax Act 1922, the Gift-tax Act, 1963, or the Wealth-tax Act, 1963, any refund or repayment is found to be due to any person, the amount to be refunded or repaid or any part thereof may be set off against the tax, payable by that person under this Ordinance or treated, at the option in writing of that person, as payment of tax payable under section 64 or section 74 thereof.

Question

A refund of tax becomes due to an assessee on reduction of total income in appeal filed by him, but the DCT does not take any action to make the refund. What are the remedies open to the assessee?

Answer

1. The aggrieved assessee can file appeal to the AJCT or the Commissioner (Appeals) against the refusal of the DCT to make the refund.
2. The assessee can apply to the DCT to adjust the refundable amount against his arrear tax demand, if any, u/s 152 of the Income Tax ordinance 1984.
3. The assessee can take administrative action, such as, applying to the Commissioner of Taxes requesting him to direct the DCT to make the refund.
4. The assessee can apply to the National Board of Revenue, requesting to direct the concerned Commissioner of Taxes for taking necessary measures to make the refund.



Chapter 29

Appeal, Tribunal, reference, Revision and ADR

Contents

Introduction
Examination context

Topic list

29.1	First appeal
29.2	Appeal against the order of Tax Recovery Officer(TRO)
29.3	Second appeal to Taxes Appellate Tribunal
29.4	Reference application to the High Court Division of the Supreme Court
29.5	Summary of appeal and reference
29.6	Revision power of the Commissioner of Taxes
29.7	Alternative Dispute Resolution (ADR)

Self-assessment questions

Introduction

Learning objectives

- Identify the conditions and procedures for different appeal, tribunal and references.
- Mention the different orders of tax authorities for which an assessee may be aggrieved.
- Define various appeals to the different appeal authorities in different situations.
- Identify the decisions or results of appeal come from different appeal stages.

Practical significance

An assessee not being a company or an assessee being a company in respect of certain cases aggrieved by any order of a DCT or IJCT can appeal to the AJCT or the Commissioner (Appeals) against such order. Appeal can also be made to the AJCT against the order of TRO.

An assessee may appeal to the Taxes Appellate Tribunal if he is aggrieved by an order of an AJCT or the Commissioner (Appeals). The Taxes Appellate Tribunal may, after giving both the parties an opportunity of being heard, pass such orders on the appeal as it thinks fit. The Taxes Appellate Tribunal may dispose of the appeal if the appellant does not appear when the appeal is called for hearing.

The assessee or the Commissioner may refer any question of law arising out of the order of the Taxes Appellate Tribunal communicated to him to the High Court Division. The High Court Division of the Supreme Court shall pass such orders as are necessary to dispose of the case in conformity with the judgment delivered by it.

For the appeal and reference, the appellant need to comply with some conditions and maintain some procedures to make his appeal valid.

Stop and think

The aggrieved parties in certain cases can appeal to the different appeal authorities. Do you think that the appeal and reference procedures are enough to get the proper judgment by the aggrieved parties under the Ordinance?

Working context

The appeal and reference procedure under tax law is the most complex and risky area for the aggrieved parties. The assessee being a client is sometimes very much required the service from an accountant. Accountants being tax expert can provide the practical and useful advice and service to their clients in such cases.

Detailed and reasonable knowledge on appeal and reference can help accountants to provide practical service to their clients in this regard.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the conditions for appeal made by the assessee against order of the DCT.
- Recognize the procedures of appeal before AJCT or the Commissioner (Appeals).
- Demonstrate the decision in appeal by the AJCT or the Commissioner (Appeals).
- Identify the appeal against order of the TRO
- Define the appeal to the Taxes Appellate Tribunal.
- Identify the disposal of appeal by the Taxes Appellate Tribunal.
- Define the reference to the High Court Division of the Supreme Court.
- Mention the decision of the High Court Division of the Supreme Court
- Identify the appeal to the Appellate Division of the Supreme Court against the judgment of the High Court Division.

Question practice

For question practice on these topics, go to the suggested answers covering this chapter.

Examiner's comments on how students should tackle questions

Candidates have prepared well for this area of the syllabus.

29.0 APPEAL AND REFERENCE

Section overview

- There are different orders of tax authorities by which an assessee may be aggrieved.
- The aggrieved assessee can appeal to appropriate appeal forum
- The aggrieved tax authority can also file appeal in certain cases.
- Appeal can be filed to different appeal authorities including Taxes Appellate Tribunal
- Appeal can also be preferred to the High Court Division of the Supreme Court.
- There are some procedures of filing appeal including time limitation.
- Judgment by the AJCT or the Commissioner (Appeals) or Taxes Appellate Tribunal.
- The Taxes Appellate Tribunal can also dispose the appeal if the appellant does not appear when the appeal is called for hearing.
- The High Court Division shall pass such orders as are necessary to dispose of the case in conformity with the judgment delivered by it.
- the assessee can prefer application to the Alternative Dispute Resolution (ADR) instead of appeal, Tribunal or Higher Court

29.1 First appeal: section 153, 154, 155 & 156

Appeals by an assessee not being a company against the order of the DCT shall be made to the Appellate Additional/Joint Commissioner of Taxes. An assessee being a company may file appeal against the order of the DCT or IJCT to the Commissioner of Taxes (Appeals). Such appeal must be filed within 45 days of the receipt of the concerned order in the prescribed form accompanied by appeal fee of Tk. 200. No appeal shall lie against order of assessment unless the tax payable on the basis of return has been paid before filing of appeal. Time-limit for disposal of appeal has been prescribed at 150 days from the end of the month of which the appeal was filed. If no order is made within the prescribed time-limit, appeal shall be deemed to have been allowed. On disposal of an appeal the order shall be communicated within 30 days from passing such order.

Type of orders that may make an assessee aggrieved:

- (a) Assessment of income;
- (b) Computation of tax liability or refund;
- (c) Set-off and Carry forward of losses;
- (d) Imposition of any penalty or interest;
- (e) Charge and computation of surcharge or any other sum;
- (f) Tax credit;
- (g) Payment of a refund.

Question

Can the first appellate authority dismiss an appeal for non-appearance of the appellant on the hearing date of appeal?

Answer

The first appellate authority is not empowered to dismiss an appeal for having the appellant absent on the hearing date. The appellate authority should pass an appellate order on merit after examination of the assessment records made available by the concerned DCT.

29.2 Appeal against order of Tax Recovery Officer (TRO): section 157

Any person aggrieved by an order of the TRO under section 139 may, within 30 days from the date of service of the order, appeal to the IJCT to whom the TRO is subordinate, and decision of the IJCT on such appeal shall be final.

29.3 Second appeal: section. 158 and 159

Appeal against the order of AJCT or the Commissioner of Taxes (Appeals) as the case may be; lie with the Taxes Appellate Tribunal.

Such appeal by an assessee must be filed, within 60 days of the communication of the appeal order, in the prescribed form accompanied by a fee of Tk. 1000. In the case of appeal filed by an assessee the tax to be paid @10% of the amount representing difference between the tax determined on the basis of the order of the AJCT or the CT(Appeals) and tax payable under section 74.

The DCT can file an appeal to the Taxes Appellate Tribunal with the prior approval of the Commissioner of Taxes.

An appeal filed by an assessee to the Taxes Appellate Tribunal shall be deemed to have been allowed if the Tribunal fails to make an order thereon within a period of six months from end of the month in which the appeal was filed.

The Taxes Appellate Tribunal shall communicate its order on the appeal to the assessee and to the Commissioner of Taxes within 30 days from the date of such order.

Question

Can the Taxes Appellate Tribunal pass an order ex-parte for non-appearance of the appellant on the hearing date of appeal?

Answer

If the appellant does not appear when the appeal is called for hearing, the Tribunal may dismiss the appeal for default. If the appellant makes an application within 30 days of such order of dismissal, for restoration of the appeal on the ground that notice of the appeal was not served on him or that the service was not valid in law or that he was prevented by sufficient cause from appearing on the hearing day and the Tribunal is satisfied, the order of dismissal shall be vacated and a fresh date of appeal hearing be fixed and disposed of on merit.

29.4 Reference application to the High Court Division of the Supreme Court: section

160, 161 and 162

The assessee or the Commissioner may within 90 days from the date of receipt of the order of the Taxes Appellate Tribunal refer to the High Court Division of the Supreme Court in the prescribed form and manner, question of law arising out of the order of the tribunal. Provided that no reference by an assessee shall be entertained unless the assessee has paid the following tax @-

- a. 15% of the difference between the tax as determined on the basis of the order of the Taxes Appellate Tribunal and the tax payable under section 74 where tax demand does not exceed one million taka;
- b. 25% of the difference between the tax as determined on the basis of the order of the Taxes Appellate Tribunal and the tax payable under section 74 where tax demand exceeds one million taka.

Provided that the Board may, on an application made in this behalf, modify or waive, in any case, the requirement of such payment.

An appeal shall lie to the Appellate division against a judgment of the High Court Division if the High Court Division certifies that the order to be fit for appeal to the Appellate Division. Provision of the Code of Civil Procedure, 1908 relating to the appeals to the Appellate Division shall so far as may be, apply in regard to the appeals under Section 162 in the like manner as they apply in the case of appeals from decrees of the High Court Division.

29.5 Summary of appeal and reference

A close scrutiny of above discussions reveals the following situations for easy understanding:

Appeal against the order of -	Appeal by	Appeal to	Time limit
Tax Recovery Officer	Any person aggrieved by an order of the TRO	Inspecting Joint /Additional Commissioner of Taxes	Within 30 days
Deputy Commissioner of Taxes	Any aggrieved assessee, not being a company,	Appellate Joint /Additional Commissioner of Taxes	Within 45 days
	Any partner	Appellate Joint /Additional Commissioner of Taxes	Within 45 days
	Any aggrieved assessee, being a company	Commissioner of Taxes (Appeals)	Within 45 days
Inspecting Joint/Additional Commissioner of Taxes	any assessee aggrieved	Commissioner of Taxes(Appeals)	Within 45 days
Appellate Joint/Additional Commissioner of Taxes or the Commissioner of Taxes (Appeals)	Any assessee or the Commissioner of Taxes	Taxes Appellate Tribunal	Within 60 days
Taxes Appellate Tribunal	The assessee or the Commissioner of Taxes	High Court Division of the Supreme Court(for reference only)	Within 90 days

29.6 Revision power of the Commissioner of Taxes: section 121A

An assessee may also file revision petition before the Commissioner of Taxes within 60 days of receipt of Order of the DCT or AJCT/AACT, who are subordinate to the Commissioner, on payment of fees of taka 200 along with payment of admitted liability. Revision petition will be deemed to have been allowed the Commissioner fails to make an order within 60 days from the date of filing of the application for revision.

29.7 Alternative Dispute Resolution (ADR)

Any dispute of an assessee lying with any income tax authority, Taxes Appellate Tribunal or Supreme Court may be resolved through ADR. Assessee can also go directly to the ADR against the assessment or re-assessment done by the DCT. If the case is pending at Appeal, Tribunal or Supreme Court then also an assessee can prefer ADR taking permission from the concerned appeal forum. After obtaining such permission from the appeal forum, the appeal (both from assessee and department) shall remain stayed during the ADR negotiation process.

Procedure to file application to ADR:-

- ➔ 4(four) set of application in the prescribed form shall have to be submitted to the respective appeal authority.
- ➔ Fee Tk. 500/- per year is to be paid and copy of which is to be attached with the ADR application.
- ➔ Application for ADR is to be filed within 30 days from the date of receiving demand notice or the date of receiving permission from the appeal authority/court as the case may be.
- ➔ Where the case is under process at appeal/tribunal/court, then the copy of permission is to be attached with the application of ADR.
- ➔ Assessee shall not be eligible for application to ADR if he does not file return of income for the concerned year and does not pay tax as per return.

Procedure of disposal by the ADR:-

- (1) Board will nominate a facilitator from the panel of facilitators and convey it to the applicant, facilitator and the concerned Commissioner of Taxes. Board may, however, change the facilitator if any objection raised by the applicant or by the tax department.
- (2) Upon receiving the application of ADR, the Facilitator shall forward a copy of the application to the respective DCT and call for his opinion on the grounds of the application and also whether the conditions of return submission and tax payment as per return by the assessee have been complied with.
- (3) If the DCT fails to give his opinion regarding fulfillment of the above mentioned conditions within 5 working days from receiving the copy, the Facilitator may deem that the conditions thereto have been fulfilled.

Panel of Facilitators:-

NBR will form a panel of facilitators. The following persons shall be eligible for appointment as a facilitator by the NBR:-

- ➔ An expert retired income tax official not below the rank of Joint Commissioner.
- ➔ A retired official of judicial service not below the rank of District Judge.
- ➔ A Chartered Accountant practiced income tax for a period not less than 8 years.
- ➔ A Cost and Management Accountant practiced income tax for a period not less than 10 years.
- ➔ An Income Tax Practitioner within the meaning of section 174(2) (f) and practiced income tax for a period not less than 20 years.
- ➔ A professional legislative expert not below the rank of Deputy Secretary.
- ➔ A business man expert at income tax law.

Methodology to be followed by the Facilitator to mitigate the dispute:-

- (1) The Facilitator will notify in writing both the applicant and the Commissioner of Taxes or the Commissioner's Representative to attend the meeting for settlement of disputes.
- (2) He may adjourn the meeting from time to time;
- (3) He may call for records or evidences from the DCT or from the applicant with a view to settle the dispute;
- (4) Before disposing of the application, he can cause to make such enquiry by any income tax authority as he thinks fit.
- (5) The Facilitator will assist the applicant assessee and the Commissioner's representative to agree on resolving the dispute or disputes through consultations and meetings.
- (6) Dispute may be resolved by an agreement either wholly or in part where both the parties of the dispute accept the points for determination of the facts or laws applicable in the dispute.
- (7) Where an agreement is reached, either wholly or in part, between the assessee and the Commissioner's Representative, the Facilitator shall record, in writing, the details of the agreement.
- (8) The recording of every such agreement shall describe the terms of the agreement including any tax payable or refundable and any other necessary and appropriate matter and the manner in which any sums due under the agreement shall be paid and such other matters as the Facilitator may think fit to make the agreement effective.
- (9) The agreement shall be void if it is subsequently found that it has been concluded by fraud or misrepresentation of facts.

- (10) The agreement shall be signed by the assessee and the Commissioner's Representative and the facilitator.
- (11) Where no agreement, whether wholly or in part, is reached or the dispute resolution is ended in disagreement between the applicant-assessee and the concerned Commissioner's Representative for non-cooperation of either of the parties, the Facilitator shall communicate it, in writing recording reasons thereof, within 15 days from the date of disagreement, to the applicant and the Board, the concerned court/ Tribunal/ appellate authority and income tax authority, as the case may be, about such unsuccessful dispute resolution.
- (12) Where the agreement is reached, recorded and signed accordingly containing time and mode of payment of payable dues or refund, as the case may be, the Facilitator shall communicate the same to the assessee and the concerned DCT for compliance with the agreement.
- (13) No agreement shall be deemed to have been reached if the Facilitator fails to make an agreement within 2 months from the end of the month in which the application is filed.
- (14) Where there is a successful agreement, the Facilitator shall communicate the copy of the agreement to all the parties within 15 days from the date on which the Facilitator and the parties have signed the agreement.

Effect of agreement:-

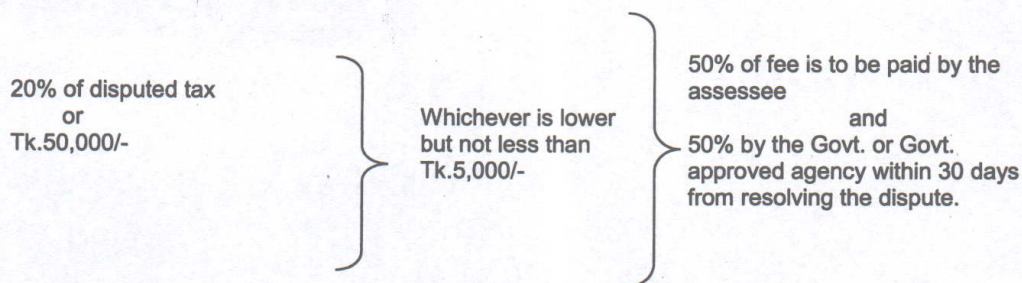
- (1) Where an agreement is reached, it shall be binding on both the parties and it cannot be challenged in any authority, Tribunal or court either by the assessee or by the department.
- (2) Every agreement shall be conclusive as to the matters state therein and no matter covered by such agreement shall be reopened.

Limitation for appeal where agreement is not concluded.-

- (1) Where an agreement is not reached wholly or partially, the assessee may prefer an appeal –
 - (a) to the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals) as the case may be, where the dispute arises against the order of the DCT.
 - (b) to the Taxes Appellate Tribunal where the dispute arises against the order of the Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), as the case may be; and
 - (c) to the Court from where the assessee-applicant has got permission to apply for ADR.
- (2) In computing the period of limitations for filing appeal the time elapsed between the filing of the application and the decision or order of the ADR shall be excluded.

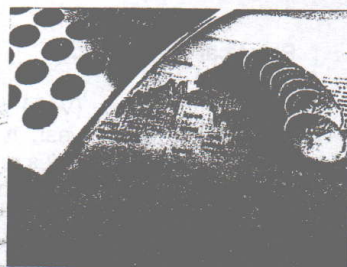
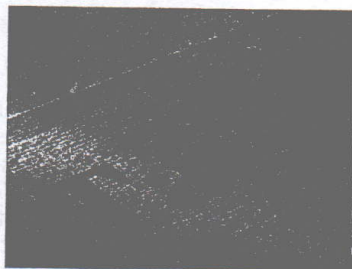
Fees to be paid to Facilitator

The facilitator is entitled to receive fees from both the assessee and the Govt. The quantum of fees is to be computed followingly:-



Self-assessment questions

- (a) What are the various Income Tax Appellate Authorities under IT Ordinance 1984?
- (b) What are the time limits and relaxation thereof, if any, in respect of the following matters under the IT Ordinance 1984:
 - i) Filing of appeal to the Appellate Additional/ Joint Commissioner of Taxes u/s. 153;
 - ii) Filing of appeal to the Commissioner of Taxes (Appeals) u/s.153;
 - iii) Filing of appeal to the Taxes Appellate Tribunal u/s. 158;
 - iv) Filing of reference application to the High Court Division and appeal to the Appellate Division of the Supreme Court u/s. 160, 161, and 162.
- (c) Discuss the provisions relating to service of notice u/s. 178 of the IT Ordinance.
- (d) Differentiate between question of fact and question of law?
- (e) "Taxes Appellate Tribunal is the highest fact finding Authority" - Do you agree with this statement?
- (f) What is the procedure to file application to the ADR?



Chapter 30

Value Added Tax

Contents

Introduction
Examination context

Topic list

30.0	Value Added Tax (VAT) system In Bangladesh
30.1	Introduction
30.2	VAT authorities & organization
30.3	Statutory definitions as per VAT Act, 1991
30.4	Evolution and economic rationality of VAT
30.5	Imposition of VAT
30.6	Application of tax rate
30.7	Tax exemptions
30.8	Turnover Tax
30.9	Supplementary Duty
30.10	VAT at trade level
30.11	VAT registration
30.12	Input tax credit mechanism
30.13	Determination of cost for calculation of VAT
30.14	Determination of value, Tariff value & Truncated base Value
30.15	Method and Time of Payment
30.16	Books and documents required to be maintained for VAT purposes
30.17	Submission of VAT return
30.18	VAT deduction / collection at source
30.19	Refund & duty drawback
30.20	Consequences of non-compliance

Introduction

Learning objectives

- Understanding the concept of VAT, Turnover Tax and Supplementary Duty.
- Getting familiar with the relevant rules and procedures of VAT, Turnover Tax and Supplementary Duty.
- Computation of cost for calculating VAT and computing VAT payable
- Understanding VAT rates and truncated base value
- Documentation under VAT system
- Knowing the consequences of non-compliance of VAT rules and regulations

Practical significance

Value Added Tax (VAT) is an important source of revenue financing to the Government of Bangladesh. Every year, it comprises more than 35% of government tax revenue and thus the Government heavily relies on Value Added Tax (VAT) for raising fund for running a big administration. Value Added Tax (VAT) is the tax that is paid on the value added by the respective tax payer. VAT is regulated by the Value Added Tax Act, 1991, Value Added Tax Rules, 1991, and SROs, notifications, orders, explanations made there-under. Unless exempted, VAT is chargeable and payable on all goods imported, produced and services rendered in Bangladesh @ 15% except on exports and deemed exports on which tax is imposed at zero percent. Some person in some cases required to register for the purposes of VAT by submitting application with some documents. Determination of cost on which VAT will be computed is very important to VAT practitioners. Method and time of payment of VAT need to be followed as per the Act and Rules. Various books of accounts and documents are required to be maintained for VAT purposes. On certain services, estimated value addition (truncated value) is instructed for determining VAT. In an economy like Bangladesh where a significant portion of Government revenue comes from VAT, knowing VAT with all technicalities is very significant. VAT Act also addresses required rules and provisions for Turnover Tax and Supplementary Duty.

There are some differences between VAT and Turnover Tax. Turnover Tax is a tax on the turnover of a manufacturer or producer of taxable goods or a trader of taxable goods or a provider of taxable services, as the case may be, who is not required to register for the purposes of VAT. The rate of turnover tax has now been re-fixed at 3% on turnover. There are some guidelines, rules and procedures on Turnover tax relating to registration, payment, books of accounts and documents to be maintained and penalties.

Input tax is the amount VAT paid earlier by a tax payer on his inputs. For claiming credit of input tax some conditions are required to be fulfilled.

Supplementary duty is an indirect tax, in addition to VAT, on luxuries, not essential and not socially desirable goods and services. The rate of supplementary duty varies from 10% to 500%.

Stop and think

Think about other types of tax and VAT. Do you realize the significance of VAT, Turnover Tax and Supplementary Duty?

Working context

The revenue collection through VAT is increasing sharply day by day. Supplementary Duty also has significance as sources for revenue to the Government. On the other hand Turnover Tax is not very significant as a source of revenue. Different methods, rules, conditions and procedures relating to VAT and other taxes are very important to know.

Clients are sometime expecting expert opinion in calculating VAT and other legal procedures relating to VAT and other taxes from accountants. So accountants should have clear concept with practical exposure in this area, so that they can take the opportunity to provide the expert service to their clients.

Syllabus links

You will be using this knowledge again to underpin the technical aspects at the Application Stage.

Exam requirements

In the examination, candidates may be required to:

- Demonstrate the concept of VAT, Turnover Tax and Supplementary Duty and identify the application of tax rate.
- Explain the registration procedures, method of computation of VAT payable, time of payment of VAT and Turnover Tax.
- Identify documents required for VAT administration.
- Identify the different schedule for VAT and Supplementary Duty.
- Identify the VAT authorities and their power and functions.
- Explain the consequences for non-compliance of VAT rules and regulation.

Question practice

For practicing question on these topics please go through the suggested answers at the end of this manual.

Examiner's comments on how students tackle questions

Candidates need to be careful on different VAT bases and rates for computing VAT payable with the respective dates of payments and the adjustments of VAT deducted/collected at sources with VAT payable to compute the net amount.

30.0 Value Added Tax (VAT) System in Bangladesh

Section overview

- ➔ VAT is the tax on the value added by a tax payer.
- ➔ Unless exempted, VAT is usually payable @ 15%.
- ➔ Some persons are not required to be registered under VAT Act.
- ➔ VAT will be paid by the importer, suppliers and provider of taxable services.
- ➔ On certain services estimated value addition is instructed for determining VAT.
- ➔ There are some specific method and time of payment of VAT.
- ➔ Some books of accounts and documents are required to be maintained by the VAT payer.
- ➔ There are clear differences between VAT, Turnover Tax and Supplementary Duty.
- ➔ The rate of Turnover Tax is 3%.
- ➔ Input tax is the amount of VAT paid earlier by a tax payer on his inputs.
- ➔ Supplementary duty is an output tax, in addition to VAT on luxury goods and services those are not essential and not socially desirable.
- ➔ Supplementary duty may vary from 10% to 500% for goods and from 5% to 35% for services.

30.1 Introduction

Value Added Tax (commonly known as VAT) is the tax on the value added amount by a tax payer. In an economy where value addition is significant and value is added at different levels, Government has sufficient rationality to impose such taxes.

VAT is an important type of indirect tax where impact and incidence of taxes fall on different persons. If tax burden can be shifted to another person then it is called indirect tax. The ultimate burden of VAT falls on final consumers as different persons have the mechanism to shift the burden onto the shoulders of others. For example, the traders, on whom VAT is charged, transfer the tax burden to subsequent traders until the goods reach the final buyers or customers who cannot shift the incidence or burden to anyone else. VAT is levied on expenditure rather on income and that is why it is sometimes called expenditure tax.

In Bangladesh, VAT is still regulated by the Value Added Tax Act, 1991 (hereinafter referred to as the Act); Value Added Tax Rules, 1991 (hereinafter referred to as the Rules); Finance Acts and various rules, regulations and notifications issued under the Act. In the Parliament already the new Value Added Tax and Supplementary Duty Act, 2012 (Act No. 47 of 2012) has been enacted. Chapter two, chapter twelve and chapter fifteen, and sections 128, 132, 134, and 135 of the new Act shall come into force at once. But the remaining provision is expected to come in force from July 2019.

Unless exempted by the First and Second Schedules under section 3(1) of the VAT Act, 1991, VAT is chargeable and payable on all goods and services imported, produced or rendered in Bangladesh @ 15% except on exports and deemed exports on which tax is imposed at zero (0) percent.

The zero rate is an actual tax rate of VAT, the same as 15 percent. An entity may claim drawback of VAT paid on purchases and can be claimed against the liability i.e., zero. On the other hand, an entity cannot claim any rebate/credit of VAT on purchase to produce exempted goods and has no tax liability against which to offset it and thereby pays tax on input which must be wholly passed on or absorbed. In this way, the zero rate allows an entity complete exemption because, for instance, the entity can claim full amount of tax he has paid on his input and, therefore, pays no tax, while all the previous stages have passed their tax liability fully forward. Initially it will involve the required cost of administration without yielding any revenue. But this will bring all economic activities under the VAT system which will help achieving the ultimate objective of having an elastic tax system for the country.

When VAT (output tax) is imposed on "full value", tax payer pays VAT (output tax) at 15%; and when VAT (output tax) is imposed on "estimated added value", the tax payer pays VAT (output tax) at 2%, 2.4%, 3%, 4.5%, 5%, 7%, or 10%, depending on the estimated value addition ranging from 13.33%, 16%, 20%, 30%, 33.34%, 46.67%, or 66.67%, as the case may be.

VAT is computed as a percentage of the value added on goods or services. It is charged on the value of consumption, applied at each point of transactions of goods or services from primary production to final consumption. At every stage one has to pay as well as collect VAT before reaching the stage of the final consumption. So, every one, except the final consumer, does not have to bear any VAT from his own account. Because whatever the person other than the final consumer has paid as VAT at the time of purchase he shall collect that amount of VAT from the persons who shall buy his goods or services and also collect tax on value which is added by him before selling. Value addition by the seller is the difference between the selling prices of the goods or services (Output) and the cost of raw materials (input) purchased. The amount of value addition may consist of processing cost such as wages, overheads etc. and profit. Thus, VAT collection increases at every stage because of the value addition that is maximized at the final stage. This value addition stops when any goods or a service is purchased for final consumption and the consumer has to bear the full amount of VAT. At each point of transaction the tax is passed onto the shoulder of next person in the form of higher price, which consists of selling price plus VAT. This process illustrates that a business does not bear VAT. Being at the final point in the chain of total transaction, the final consumer bears the whole amount of the tax. The basic procedure of VAT system is explained below with an example assuming five layers of transactions from importer to final consumer.

Consumer	Value of Input / Import/ Raw materials (excluding VAT)	Value addition		Value of Output / Sales	VAT Paid on input / Import /Raw materials	VAT Levied on Output/ Sales	Total invoice price including VAT	VAT Paid / Payable at different stage
		Processing Cost	Profit					
Importer:	100	10	20	130	15.00	19.50	149.50	19.50
Producer :	130	35	15	180	19.50	27.00	207.00	7.50
Wholesaler :	180	5	20	205	27.00	30.75	235.75	3.75
Retailer:	205	5	15	225	30.75	33.75	258.75	3.00
Final consumer:	225	-	-	-	-	-	-	-
							Total	33.75

The above table illustrates the computation of VAT at different stages. Except for importer, VAT payable in column (I) is computed by deducting VAT paid on input (F) from VAT levied on output (G). In case of importer, the process has started from him in this illustration and importer himself is responsible to pay total VAT to the Government Treasury at this stage. However, the importer has collected the total VAT paid to Government from his customer i.e. the producer. In other cases, such as producer who is responsible for payment of VAT of Tk. 7.50, this amount has been computed by deducting the VAT paid by the producer at input stage (Tk. 19.50) from the VAT levied on sale (Tk. 27) which is to be collected from the wholesaler. In other words, this is exactly 15% of value addition (C+D) by the producer (15% of Tk. 50) as in all other cases except importer and final consumer.

Though the above illustration gives a view that VAT is a very simple system of taxation for the taxpayer and government but practically this illustration reflects the system partially. Because in Bangladesh, exceptions in VAT system are observed due to the presence of 'truncated base' value for services and trading, tariff value for goods and VAT exemption etc.

Under the 'truncated value' system reduced rates (lower than the standard rate of 15%) are allowed to be collected from the consumers (who may or may not be the final consumers) and the seller cannot set off his/her input tax against his/her output tax.

In case of VAT exemption, VAT is exempted at output stage and VAT paid at input stage cannot be set off and should be treated as cost. But in case of Zero rated VAT the amount paid as VAT at input stage can be recovered by getting claiming rebate/drawback of the VAT paid at input stage.

30.2 VAT authorities & organizations

The following are the VAT authorities under section 20 of the VAT Act, 1991:-

- 1 Member (VAT), NBR
- 2 Chief Commissioner,
- 3 Commissioner,
- 4 Commissioner, (Appeal),
- 5 Commissioner, LTU,
- 6 Director General, Central Intelligence Cell;
- 7 Director General, Audit, Intelligence and Investigation Directorate,

- 8 Director General, Duty Exemption and Drawback Directorate,
- 9 Additional Commissioner or Additional Director General or Director (CIC),
- 10 Joint Commissioner or Joint Director (CIC) or Director
- 11 Deputy Commissioner or Deputy Director,
- 12 Assistant Commissioner or Assistant Director,
- 13 Revenue Officer,
- 14 Assistant Revenue Officer,
- 15 VAT Officer with any other designation.

30.3 Statutory definitions as per VAT Act 1991.

Some important terms relating to VAT are defined in section 2, VAT Act 1991. Some of the definitions are presented below with specific references:

(1) **Exempted** means goods and services exempted from VAT [section 2(a)].

(2) **Output tax** means Value Added Tax imposed under this Act [section 2(b)].

(3) **Input means-**

(a) all raw material, laboratory re-agent, laboratory equipment, laboratory accessories, any gas or any material used as fuel, packaging material, services and machinery and spares excepting labor, land, building, office equipment and conveyance;

(b) in case of trading, goods imported, purchased, achieved, or otherwise procured in view of sale, exchange or in other words handing over or service [section 2(c)].

(4) **Input tax** means Value Added Tax paid on inputs imported by registered person or purchased from any other registered person and VAT collected in advance on imported goods is also to be included in the preview of Input tax [section 2(d)].

(5) **Tax period** means a term of one month or such term which may be fixed by the Government for this purpose by Gazette notification [section 2(e)].

(6) **Taxable goods** mean the goods which are not included in the 1st schedule [sec 2(f)].

(7) **Taxable services** mean services which are not included in the second schedule [section 2(g)].

(8) **Account Current Register** means a register for an account maintained with the Commissioner by the registered person in specified form in which details of purchases, sales, treasury deposits, payable and creditable VAT, and where applicable, statement of other taxes will be entered [section 2(i)].

(9) **Turnover** means all money received or receivable by any person for the supply of taxable goods produced or manufactured by him or for rendering of taxable services for a particular period [section 2(k)].

(10) **Return** means the return required to file under sec. 35 [section 2(n)].

(11) **Fixed date** means -

(a) Specified date to pay VAT or, where applicable, VAT and Supplementary Duty as per section 6;

(b) Specified date to file return as per VAT Rules [section 2(o)].

(12) **Goods** mean all kinds of movable property, excluding shares, stocks, coins, securities and recoverable claims [section 2(p)].

(13) **Commercial documents** means books of accounts, files, documents or papers maintained by a person to record his commercial transaction showing financial condition of his business, namely :-

debit voucher, credit voucher, cash memo, daily accounts of purchase and sales cash book, primary or journal book, bank account and accounts or documents related thereto, trial balance, ledger, financial statement and analyses, profit and loss account, profit and loss appropriation account, bank account reconciliation and balance sheet and all related documents including audit report [section 2(qq)].

(14) **Person** means an individual whether or not incorporated, any company or society, partnership business, firm, statutory or other organization or Institution or their representative are also to be included [section 2(t)].

(15) **Zero rated goods or services** means goods or services which are exported or deemed to have been exported or any food or any material as described in sub-section (2) of section 3 on which value added tax or, where applicable, supplementary duty will not be imposed and all other taxes and duties paid on inputs used for manufacturing such exportable goods (excluding advance income tax and any supplementary duty paid on such inputs used for manufacturing exportable goods as notified by the Government for the purpose through Gazette notification) shall be refunded [section 2(v)].

(16) **Total receipts** means the total amount of money received or receivable, including commission or charge, by a provider of taxable services in exchange of such services rendered excluding VAT [section 2(x)].

30.4 Evolution and Economic Rationality of VAT

VAT is the youngest member of the sales tax family. This tax was proposed for the first time by Dr. Wilhelm Von Siemens from Germany in 1919 as an improved turnover tax. The improvement consisted in the subtraction of previous outlays from taxable sales with the results that the tax base of each firm would be reduced to the value which it added to the product. In 1921, VAT was suggested by Professor Thomas S. Adams for the United States of America who observed sales tax with a credit or refund for taxes paid by the producer or dealer (as purchaser) on goods bought for resale or for necessary use in the production of goods for sales. VAT was also recommended by the Shoup Mission for reconstruction of the Japanese Economy in 1949. However, the tax was not introduced by any country till 1953. France led the way in 1954 by adopting a VAT that covered the industrial sector alone and the tax was limited up to the wholesale level. The tax was limited to the boundaries of France until the fifties.

VAT has, however, been spreading rapidly since the sixties. The Ivory Coast followed France by adopting VAT in 1960. The tax was introduced by Senegal in 1961 and by Brazil and Denmark in 1967. The tax has gathered further momentum as it was made a standard form of sales tax required for the countries of the European Union (then European Economic Community). In 1968, France extended VAT to the retail level while the Federal Republic of Germany introduced it in its tax system. The Netherlands and Sweden imposed this tax in 1969 while Luxembourg adopted it in 1970, Belgium in 1971, Ireland in 1972, and Italy, the United Kingdom, and Austria in 1973. Of the other members of the European Union, Portugal and Spain introduced VAT in 1986, Greece in 1987, while this tax was adopted by Finland in 1994. Many other European countries have adopted VAT. Similarly, many countries in North and South America and Africa have introduced VAT.

VAT has been spreading in the Asian region as well. The Republic of Vietnam adopted VAT briefly in 1998. South Korea introduced VAT in 1977, China in 1984, Indonesia in 1985, Taiwan in 1986, Philippines in 1988, Japan in 1989, Thailand in 1992, and Singapore in 1994 while Mongolia has been implementing VAT since 1998.

In the South Asian Association for Regional Cooperation (SAARC) region, VAT has been considered in great depth in India. This country introduced VAT in a different way under the name of Modified Value Added Tax (MODVAT) in 1986. Unlike the VAT system of other countries, the Indian MODVAT system is designed to collect the excise duty. This tax is adopted mainly to avoid the disadvantages of input taxation, such as tax cascading. The scope of MODVAT has been extended over the years.

- (b) such goods which have been presented for export in accordance with section 131 of the customs Act 1969 but not exported within thirty days from the submission of the Bill of Export or such extended time as allowed by the Commissioner for this purpose.
- (3) Value Added Tax will be paid by:
 - a. the importer at the import stage in case of imported goods;
 - b. the supplier at the stage of the manufacturing or production in case of goods manufactured or produced in Bangladesh;
 - c. the provider of services in case of rendering of services;
 - d. service recipient in case of services rendered from outside Bangladesh territory; and
 - e. in other cases, the supplier or service recipient.
- (4) For fixing and computing VAT payable on any imported or supplied goods under section 3, same classification will be applicable as is applicable in Customs Act.
- (5) In the public interest, to fulfill the object mentioned above the Board by notification in the official gazette may -
 - (a) Declare any taxable goods or class of taxable goods as taxable services and any taxable services as taxable goods;
 - (b) Provide any explanation to determine the limit of any taxable services.

30.6 The rate of Value Added Tax

Application of tax rates as per section 4 of VAT Act is presented below:

- (1) The rate of Value Added Tax in case of supply of taxable goods or services will be that rate of Value Added Tax imposed upon those goods fixed for the time being in accordance with section 6(2) or, where applicable, section 6(3).
- (2) The rate of Value Added Tax in case of import of taxable goods will be that rate of Value Added Tax imposed on such taxable goods on the date as mentioned in section 30 of Customs Act, 1969 (IV of 1969).

The tax will come in force on that date on which the Bill of Entry is presented under the Customs Act for clearance of the said goods for consumption within the country.

However, where the Bill of Entry is submitted before the arrival of conveyance in which the goods are being imported has reached the country the relative date will be the date of submitting the manifest after the said conveyance has arrived, and imposing of VAT will come in force at the date of release of goods from the warehouse under section 104 of Customs Act.

30.7 VAT exemptions

Applicable area of VAT

- ☐ From the very inception, VAT was applicable on most of the goods and a few number of services at the rate of 15%.
- ☐ VAT is applicable on all goods under Harmonized Commodity Description and Coding System (H. S. Code) excepting the following [section3]:
 - ➔ All exports, deemed exports and goods for consumption outside Bangladesh and other goods supplied to an outgoing conveyance.
 - ➔ All goods under Second Schedule of Narcotic Control Act, 1990, in case of manufacturing in Bangladesh.
 - ➔ Goods and services under the Turnover Tax.
 - ➔ Goods described under the First Schedule of the VAT Act, such as: live animals, meat, fish, fresh milk, unprocessed agricultural products, natural sands, rough timber, raw silk cocoon, raw wool, raw cotton, raw jute etc.,

VAT is applicable on all services excepting the services described under the 2nd Schedule of the VAT Act, such as:

Basic services to live on, personal services, social welfare services, medical and health services given by the private sector, library, museum, art gallery, zoo, botanical garden, transmission of radio and TV (excepting other commercial activities), taking deposit and savings by Bank and Financial Organization, life insurance policy, savings, SEC, transportation of passenger (without AC) and goods, air lines (excepting the farm rents chartered plane and helicopter), religious activities, postal service (excepting courier and express mail service), all charitable and scientific service activities provided for public interest, stevedoring and hand operated laundry and cleaning activities (except services provided in hotel and mechanized laundry), etc.

Services under First Schedule (Part-2) of the Excises and Salt Act, such as services rendered by Bank or Financial Institutions and services rendered by air line.

Exemptions of VAT & SD under SRO's:

- Government by notification in the official gazette exempt VAT or SD on importation or supply of any goods or class of goods or on rendering of any services subject to some conditions and limitations.
- NBR may by special order exempt payable VAT or SD on any importation of goods, receive of supplies or receive of services subject to some limitations and conditions in view of enforcement of any international or bi-lateral agreement on reciprocal basis.
- NBR may by special order exempt VAT or SD on importation or supplies of any taxable goods or on services rendered mentioning the reason in each case.

As per SRO No-148-Law/2001/313-Mushak dated 7 June 2001, tobacco cigarette and aerosol are exempted from payment of VAT at trade stage.

As per order no. 13/VAT/2014 dated 25 November 2014 of NBR, locally produced pharmaceutical is required to pay trade VAT at manufacturing stage. As such locally manufactured pharmaceutical products are exempted from payment of VAT at trade stage.

As per SRO No-253-Law/2007/482-Mushak dated 14 November 2007, Supplementary duty is exempt at trade stage.

Goods:

Lifesaving drugs, plastic kitchen items, water bottle, basket and Tiffin carrier used by the school children, plastic hanger, hand fan and some other plastic items, kitchen and household utensils made of aluminum, MS sheet, tin or steel (enameled or otherwise colored), some medical instruments/apparatus, agricultural machinery and instruments, some scientific instruments, books, booklet, newspaper, periodicals and journals, computer software, computer and accessories, computer ribbon and modem, aircraft's and parts thereof, chemical fertilizer, insecticides, fungicides, herbicides, copra waste, mustard oil, full fat soybean, contraceptives, sugar and molasses, loaves and bread, biscuit (hundred taka per kg) cake (hundred taka per kg-except party cake), jute goods, electricity, power generator, hard board, newsprint (in roll or sheet form) handloom fabrics of synthetic fiber and cotton, silk yarn, plastic or rubber sandal (up to Tk.100/pair), ball pen, wood pencils, type writer, spares of textile and jute mills, packed liquid milk, ghee, butter, curd (excepting sweet curd), hurricane light, kerosene burner, tractor, power tiller (excepting prime mover) etc.

VAT exemptions for cottage industries

Goods produced by the cottage industries exempted from VAT and SD under some conditions mentioned below as per SRO No-172-Law/2013/676-VAT, dated 06 June, 2013 issued under section 14(1) of VAT Act.

Conditions:

For the purpose of the SRO, cottage industries means —

- (i) it is not a company;
- (ii) its Invested capital for plant, machinery and equipment at any time in the year should not exceed taka 40 lacs;
- (iii) its annual turnover does not exceed taka 60 lacs.
 - This cottage benefit may be taken through certain procedure :
 - There is a negative list of items for cottage benefit in the above mentioned SRO.

VAT exemption on services [SRO No. 167-Ain/2018/790-Musak, dt. 07.06.2018]:

Temporary hotel and restaurant; cold storage; death news related advertisement in the newspaper; printing charges on books, periodicals and educational materials for the students; binders, Internet (in case of rendering service to educational institution only), VAT payable on insurance premium by Private Sector Power Generation Company, photo maker, supply of school tiffin, transportation of food grain, land seller, power used for irrigation and cold storage, small tailoring shop and tailors (except AC tailoring shop and tailors), tourist place or establishment (including historical place), manpower exporter, stock and security broker, tour operator, meditation service, etc.

Exemption at trade level

Maize seeds (in package form), rice all sorts,

All contraceptives,

Insulin, vaccination for human medicine, vaccination for veterinary medicine, Homeopathic, Ayurveda, Unani and Kidney dialysis solution, anti-cancer medicine,

All fertilizer, Streptokinase,

Insecticides, Fungicides, Pesticides, Anti sprouting products, Plant growth regulator and Disinfectants used in agricultural activities,

Sheath contraceptives, Jute products,

Mobile phone set,

Insulin pen / insulin cartridge.

30.8 Turnover Tax

Concept of Turnover Tax

Turnover Tax is a tax, as an alternative to VAT, on the turnover of a manufacturer or producer of taxable goods or a trader of taxable goods or a provider of taxable services, as the case may be, who is not required to register for the purposes of VAT under section 15 of the VAT Act, 1991.

Turnover Tax is administered under VAT Act and Rules. It is a liberal and easier tax treatment for the small enterprises (supplies and services) [sections 8, 16 & rule 4].

Turnover means total money received or receivable in a certain period by a registered person against his goods manufactured, service rendered or goods supplied.

Turnover Tax means the tax payable on the said total money under section 8 of VAT Act, 1991 and rule 4 of VAT Rules, 1991.

Who is eligible to pay Turnover Tax?

- Yearly turnover not more than tk. 80 lac, VAT is exempted and Turnover Tax is payable.
- Rate of turnover tax to be applied @ 3%.
- Not listed in the SRO No.183-law/2012/641-Mushak, dated: 07 June, 2012.

21 types of goods and 62 services

The turnover tax was payable at 2% of the turnover at the time of its introduction. However, the rate of turnover tax has now been re-fixed at 3%.

Enlistment for Turnover Tax

If the annual turnover of any supplier of goods or provider of services not over Tk. 80 lac, he may apply to the Divisional Officer of VAT in Form VAT-6 for enlistment for the purposes of turnover tax. If the Divisional Officer is satisfied as to the turnover, he will issue the Certificate of enlistment in Form VAT-8 within 7 working days of the application.

Once enlisted, no renewal for enlistment is required. No fee is payable for enlistment for the purposes of turnover tax.

If, after enlistment, the turnover of an enlisted person exceeds Tk.80 lac during a continuous period of 12 months, he will apply within next 30 days after the end of 12 months for VAT registration to the VAT Divisional Officer in form VAT-6.

However, contractors, C&F agencies, leasers, procurement provider, rent-a-car service providers and banking & non-banking service providers shall not be allowed to registration for turnover tax even their yearly turnover falls within Tk. 80 lacs.

When and how Turnover tax is paid

The turnover tax shall be payable, monthly, quarterly or yearly, as specified by the enlisted person in his application @ 3% of turnover during the month, quarter or year, as the case may be.

The turnover tax is payable in advance in case of yearly payment, within 30 days of the date of declaration; and in other cases, in case of first payment, within 30 days of the date of declaration based on declared turnover; and in case of subsequent payments, within 15 days of end of each month or end of each quarter, as the case may be. In case of subsequent payments of turnover tax, the Treasury Challan along with Turnover Tax Return Form VAT-4 shall be submitted to the Divisional Officer of VAT within 15 days from the end of each month or quarter, as the case may be.

Turnover tax will be paid to the treasury, Bangladesh Bank or Sonali Bank, as the case may be, through Challan form T.R.-6, using 13 digit code; for example, 1/1133/0015/0313 for Dhaka (North) Commissionerate; and 1/1133/0010/0313 for Dhaka (South) Commissionerate.

If any turnover tax payer fails to pay tax on due date, the Divisional Officer of VAT may impose on that tax payer a fine up to Tk. 5,000; and interest @ 2% per month for the delayed or non-payment period [Rule 4(13A)].

No input tax credit is allowed for both the seller and buyer of goods or services under turnover tax.

Books and documents required to be maintained for Turnover Tax purposes

- 1 Daily purchases and sales register in form VAT-17A;
- 2 Cash memos in serial order in self-design;
- 3 Treasury challan in favour of payments;
- 4 Turnover Tax return in form VAT-4; and
- 5 Declaration of turnover in form VAT-2B.

Penalty for false declaration for Turnover Tax

If a taxpayer makes false declaration for turnover tax by understating his turnover, he may be penalized under section 37 of the VAT Act, 1991 to the extent of at least half of the tax evaded and at best equal to the tax evaded; and also required to pay unpaid tax.

Differences between VAT and Turnover Tax

<u>Particulars</u>	<u>VAT</u>	<u>Turnover Tax</u>
1. Application for registration	Application is to be made to the Divisional Officer.	Application is to be made to the Divisional Officer.
2. Tax rate	Tax payer pays VAT at 15%, which may be "full" invoice value or tariff value or truncated value as the case may be.	Tax payer pays turnover tax at 3% on of the "full" invoice value.
3. Rebate/Credit against input tax	Tax payer can take rebate/credit of input tax paid by him.	Tax payer cannot take rebate/credit on input tax paid by him.
4. Rebate/Credit of VAT paid by purchaser	The purchaser can take rebate/credit on the VAT paid by him earlier.	The purchaser cannot take credit on the VAT paid by him earlier.
5. Tax payment	The tax payer pays VAT before each delivery of goods or within the 15th of next month in case of rendering services.	The tax payer pays monthly, quarterly or annually, as the case may be.
6. Books and documents	The tax payer maintains purchase register, sales register, account current register and prescribed invoices.	The tax payer maintains daily purchase and sales register only.
7. Return	The tax payer submits return in form VAT-19 monthly within 15th of next month after each tax period (20th day for insurance companies).	<p>The tax payer submits return in Form VAT-4 monthly or quarterly within 15th from the end of each month and each quarter (English month).</p> <p>The tax payer paying the Turnover Tax once in a year shall have to submit the return once annually.</p>

30.9 Supplementary Duty

Goods and services socially undesirable, luxurious and not essential mentioned under the Third Schedule of the VAT Act are subject to SD under VAT Act [section 7 and SRO] at a rate ranging from 10% to 500% for goods, such as: 10%, 20%, 30%, 45%, 60%, 100%, 150%, 200%, 250%, 300%, 350%, 500%; and at a rate ranging from 5% to 35% for services, such as: 5%, 10%, 20%, 25% and 35%.

Major Items are:

Goods: Import stage

- Fresh and chilled tomato, fresh and dried nut, fresh and dried fruits, spices, finished chock let
- Marble, granite, cement, petroleum products
- Detergent powder, mosquito coil, printed PVC sheet
- Toilet paper, tissue paper, woven fabrics, carpet

- Diamond, imitation jewellery
- Explosive powder, revolver, pistol and other fire arms.
- Liquor, motor vehicle
- TV, refrigerator, VCP, VCR, VCD, DVD

Goods: Local stage

- Cigarettes, Bidi, Zarda and Gul,
- Natural gas in gaseous form
- Perfume, cosmetics and other luxury goods
- Oriented strand board and the board similar type, fiber board, plywood, vinere board, panels and similar types, paints
- Mosaic cube and similar goods, ceramic tiles, bath tub, jikuzee, sink, basin and other bathroom fitting and fixtures.
- Other filament lamp, excepting ultra violet/infra-red lamp and float glass.
- Beverage and energy drink, fruit juice and fruit drink
- Mineral water (up to 3 liter)

Services: Local stage

- Satellite channel distributor
- SIM card supplier
- Hotel and restaurant (with liquor or floor show) etc.

30.10 VAT at trade level

- ☐ At the time of inception of VAT in Bangladesh it was not applicable at trade level. It was applicable at the import level, production level and service level only. Later on in 1996 only 12 luxury items at the trade level were brought under VAT. Afterwards the items were increased to 60 within some years. But the result was not satisfactory. In 2001 all the items are brought under VAT at the Trade level. To impose and realize VAT from trade sector of Bangladesh the traders was defined in a different way.
- ☐ Trader means a person who sales or otherwise handover the goods to other person in exchange of consideration without changing any shape, nature, characteristics or quality of goods imported, purchased, achieved or otherwise collected by him [section 2(thata tha tha)].
- ☐ Commercial Importer means a person who sales or otherwise handover the goods to other person in exchange of consideration without changing any shape, nature, characteristics or quality of goods imported by him excepting the goods described in the First Schedule [section 2(thata tha)].
- ☐ NBR by notification in the official gazette may fix the "rate and amount of value addition" of any goods or class of goods at trade level [section 5(2)].
- ☐ Realization of VAT payable on the supply of goods by the commercial importer, trader and retail small trader.
- ☐ **Commercial importer :**
 - ATV to be paid at the importing customs station through Bill of Entry at the time the import level duties are paid.
 - Base value for ATV: $[(\text{Approved assessable value} + \text{Customs Duty (CD)} + \text{Supplementary Duty (SD, if any)} + \text{other duties \& taxes (except VAT \& AIT)}) + 33.34\% (\text{value addition})] \times 5\%$.

- Value to be declared under section 5(2) with the "form-1kha" (rule 3) to the divisional Officer of VAT for the next supply and taxes to be paid @ 15%.
- Goods to be supplied subject to payment of taxes and issuance of "Mushak-11" and "Mushak-11ka" challanpatra.
- VAT paid at the import level and as ATV may be taken as credit/rebate against payable taxes subject to the provision of section 9.
- Commercial importer should maintain accounts under rule 22, but "form-ka" may be maintained instead of books of accounts for purchase (Mushak-16) and books of accounts for sale (Mushak-17).
- VAT return (Mushak-19) to be submitted to the local VAT office by 15th of the next month.
- There is a negative list for ATV.

☐ Local trader :

- Base value for VAT: [(Purchase value + 33.34% (value addition)) x 5%, ie, 15% on 33.34 (amount of value addition).
- Value to be declared under section 5(2) with the "form-1kha" (rule 3) to the divisional Officer of VAT for supply of goods and taxes to be paid @ 15%.
- Goods to be supplied subject to payment of taxes and issuance of "Mushak-11" and "Mushak-11ka" challanpatra.
- VAT paid at the earlier stage may be taken as credit/rebate against payable taxes subject to the provision of section 9.
- Local trader should maintain accounts under rule 22, but "form-ka" may be maintained instead of books of accounts for purchase (Mushak-16) and books of accounts for sale (Mushak-17).
- VAT return (Mushak-19) to be submitted to the local VAT office by 15th of the next month.
- The rate of value addition for petroleum substances will be counted as 13.33% and 2% VAT will be calculated on the total value of the supplies.
- The rate of value addition for super-shop will be counted as 33.34% and 5% VAT will be calculated on the total value of the supplies.
- The rate of value addition for pharmaceutical will be counted as 16% and 2.4% VAT will be calculated on the total value of the supplies.
- In case of payment on the basis of truncated base, no rebate can be claimed.
- But one can pay VAT at the rate of 15% on actual basis declaring value and maintaining required Registers and formalities [according to ideal VAT system]. In that case, [VAT = Sale value x 15% – Purchase value x 15%].

Trade VAT for small retail traders:

The small retail trader whose annual turnover is not over tk. 80 lac, he can pay VAT as per the amount mentioned in the table below:

SL	Applicable area	Max. value addition per year	Rate of VAT	Mini. payable VAT per year
(1)	(2)	(3)	(4)	(5)
1.	Dhaka North and South & Chittagong City Corporation	186,667	15%	28,000.00
2.	Other City Corporations	133,334	15%	20,000.00
3.	Municipal area of District Town	93,334	15%	14,000.00
4.	Other area of the country	46,667	15%	7,000.00
<input type="checkbox"/> VAT may be paid annually or monthly basis. <input type="checkbox"/> The small retail trader will have to maintain purchase documents, cash memo and "books of accounts for sales"				

30.11 VAT registration

When registrations are required for the purposes of VAT

A person needs to register for the purposes of VAT before the commencement of; -

- (a) production or manufacture of taxable goods;
- (b) trading of taxable goods;
- (c) rendering of taxable services; import of taxable goods

Once registered, no renewal of registration is required.

Persons required to register for the purposes of VAT

The following persons are required to register for the purposes of VAT:

- (a) importer;
- (b) exporter;
- (c) producer;
- (d) trader; and
- (e) service provider.

The persons who are falling under the category of "Turnover Tax" and "cottage industry" are not required to register for the purposes of VAT. However, producer or service provider having turnover below Tk. 80 lac, thereby falling under the category of "turnover tax", and "cottage industry" need to be enlisted with the concerned Divisional Officer of VAT may also voluntarily register for the purposes of VAT.

If any person who ought to register for the purposes of VAT fails to do so, the VAT Divisional Officer may register the person under section 15(4) of the Act effective from the date the person ought to have registered; and informs the person accordingly.

As per SRO No-183-Law/2012/641-Mushak dated 7 June 2012, certain manufacturer and service providers will be required to obtain VAT registration irrespective of their annual turnover. Moreover producer of goods within Dhaka and Chittagong City Corporation Area will be mandatorily required to obtain VAT registration.

Documents to be submitted for VAT registration

Application for VAT Registration shall be made to the VAT Divisional Officer in form VAT-6. The following documents shall be submitted along with the application form:-

- (a) Trade License;
- (b) TIN Certificate (if any);
- (c) IRC/ERC Certificate(if any);
- (d) List of all related selling centers in the case of "central registration";
- (e) Declaration in Form VAT-7 of the production, business premises, plant, machinery, fittings, finished or tradable goods, stocks, and inputs;
- (f) Citizenship Certificate;
- (g) Photograph of proprietor or MD;
- (h) Bank Solvency Certificate.

If the application is complete, the VAT Divisional Officer shall issue directly or through online where applicable, the certificates of registration in form VAT-8 within 2 working days of the application.

No fee is payable or no renewal is needed for registration for the purposes of VAT.

If a person carries out business from various premises, he may obtain "central registration" so as to pay VAT; and complies with the requirements of the VAT laws "centrally". However, no "group" (that is,

various companies/entities under common management or ownership) registration is permissible under the VAT Act, 1991.

If "central registration" is not obtained, then separate registration for separate premises shall be required for the purposes of VAT. However, if a registered person changes his premises or businesses, he will file declaration with the VAT Circle Office in Form VAT-9 at least 14 days prior to such changes in his premises or businesses.

When registration may be cancelled

The registration may be cancelled for the purposes of VAT if:-

- (a) the registered person discontinues businesses;
- (b) the registered person's businesses are exempted for the purposes of VAT;
- (c) the turnover of the registered person is below Tk. 80 lac;
- (d) the registered person fails to commence business after obtaining certificate of registration;
- (e) the turnover of the self-registered person is below tk. 80 lac. for next one year from the date of self-registrations.

The registered person shall apply to the VAT Circle Office in VAT form-10 for cancellation of the registration.

30.12 Input tax credit mechanism

Input tax is the amount of VAT paid earlier by a tax payer on his inputs, that is, all raw materials, packing materials, services, fuel, machinery, spare parts, and all purchased goods for sales. However, inputs do not include labor, land, buildings, office equipment, vehicles and their construction or maintenance materials and insurance relating thereto.

Conditions to be met for claiming input tax credit

Input tax credit facility is a right for the tax payer. But it is not free to exercise. This rebate can only be taken under certain conditions. The following conditions are to be met for claiming credit of input tax:-

- a) The tax payer must be registered under VAT, not turnover tax or not a VAT payer under tariff value or truncated value.
- b) The tax payer must have Bills of Entry for imports and VAT Invoices (VAT-11) for local purchases of goods and services, maintained for 6 years.
- c) The tax payer must declare the inputs in price declaration including output/input ratio.
- d) The tax payer must claim the input tax within prescribed time limit.
- e) The tax payer must possess the inputs for which input tax has been claimed.
- f) The tax payer can claim credit against VAT only, not import duty, supplementary duty and/or income tax at source. However, an exporter can claim credit against import duty and/or supplementary duty under "duty exemption and drawback" (generally known as DEDO) arrangement under rule 19(4).

Special treatment of specified "input tax"

The tax payer can claim 80% of the VAT paid as claim against input tax in respect of charges for gas, insurance, electricity, telephone, teleprinter, FAX, internet, freight forwarders, clearing & forwarding agents, WASA, audit and accounting firms, procurement providers, security services, legal adviser, transport contractor and banking services.

Negative list for claiming input tax

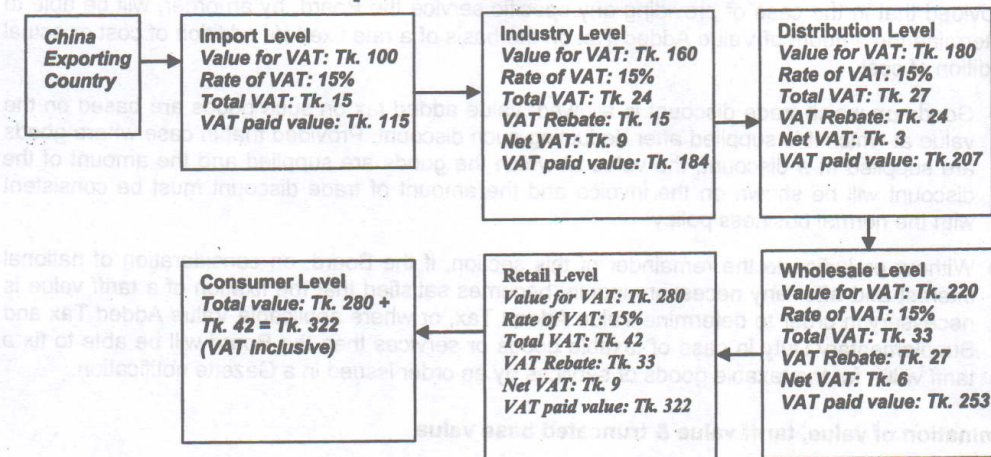
Under section 9 of the VAT Act, suppliers or traders of taxable goods or commercial importer or providers of taxable service are entitled to receive input tax credit in each tax period against output tax payable on goods supplied or service rendered by him, except in the following cases, namely:

- (a) Value Added Tax paid on inputs used in the production of exempted goods;
- (b) Turnover Tax paid on inputs procured from a Turnover Taxpayer;
- (c) Supplementary Duty, paid on inputs, used in the production of goods or rendering of service;
- (d) Value Added Tax paid on reusable package at any other time except for the first time;
- (e) Value Added Tax, paid on such goods and services as are related to the construction, balancing, modernization, replacement, expansion, renovation and repair of any building or structure or establishment, purchase and repair of all kinds of furniture, stationary, air conditioner, fan, lighting equipment, generator, architectural plan and design, though directly related to production of taxable goods or service;
- (f) various goods and services related to production or supply of taxable goods or rendering of taxable service, the Value Added Tax paid in excess of the rate of Value Added Tax on such goods and services set by Rules;
- (g) Value Added Tax paid against expenditure on travel, entertainment, staff welfare and development activities;
- (h) in the case of
 - (i) Value Added Tax paid on the inputs which are not included in the taxable base value of goods mentioned in section 5(2);
 - (ii) if total input price increases by more than 7.5 percent, input tax applicable on such increased value of inputs purchased or collected without declaration of revised price;
 - (iii) input tax paid on inputs purchased by traders who are mentioned in the second proviso of section 5(2);
- (i) the Value Added Tax paid on inputs purchased by the specified service provider as per proviso of subsection (4) of section 5;
- (j) input tax paid on inputs purchased by the trader mentioned in sub-section (4a) of Section 5;
- (k) Value Added Tax paid on inputs purchased by a supplier of goods or service provider at Tariff Value fixed as per provisions of sub-section (7) of section 5;
- (l) input tax mentioned in invoice or in Bill of Entry with a registration number of other than the registration number of the supplier, trader or service renderer or purchaser;
- (m) Value Added Tax paid on the goods under the custody or possession or occupancy of other person;
- (n) VAT paid on inputs that have not been entered into the Purchase Register prescribed by Rules;
- (o) in case of inputs released under Bank Guarantee, until the Bank Guarantee finally disposed of,
- (p) in case the purchase price of the inputs of goods or service stands BDT one lakh or exceeds this limit and if part or full payment of the same is made without banking or electronic channel, in that case the input tax paid on that purchase.

Explanation:

"Banking medium" means bank account mentioned by enlisted or registered person as per section 8, 15 and 17 in Form prescribed by rules at the time of enlistment or registration as applicable. And time to time amended or newly included bank account will also include here.

How does the Tax Credit/Rebate system work at different levels of a business supply chain? [Flowchart for Credit/Rebate Mechanism]



30.13 Determination of cost for calculation of VAT

The following discussion is based on section 5 of VAT Act 1991.

- (1) In case of importation of goods the amount on which the Value Added Tax will be payable, will be determined by adding the amount of import duty with assessable value under section 25 or 25A of the Customs Act and Supplementary Duty along with any other duty and tax (if any) except advance income tax.

Assessable	Value on which Import Duty will be charged	***
Add:	Import Duty	**
Add:	Supplementary Duty	**
Add:	Other duties, if any	**
Add:	Other taxes, if any	**
Value on which Value Added Tax will be charged		***

- (2) In case of supply of goods, subject to the provision mentioned in sub-section (3), the Value Added Tax which will be payable on the price receivable by the manufacturer or producer or trader from the buyer. Such price includes raw material costs and other costs incurred by the manufacturer or producer or trader and in appropriate cases, it also includes commission, charges, fees, Supplementary Duty, any other duties and taxes (excluding value added tax), and profit.

Provided that, in cases where goods subject to value added tax are manufactured with imported material, or in the case of sale, exchange or transfer of imported goods in any other manner, input tax credit is taken under section 9 of this Act on the basis of value arrived at under sections 25 or 25A of the Customs Act then the Value added tax due on the goods so supplied shall be calculated on the basis of such value.

However, the Board may set the rules of computing value for VAT when one registered manufacturer wants to manufacture branded product of another manufacturer.

- (3) Where Value Added Tax is to be imposed on the basis of the retail price of goods, the Government by Gazette notification will be able to fix the retail price of those goods on which value added tax will be imposed and such retail price will be calculated by the producer or manufacturer after approval of the proper officer which will include all kinds of expenditure, commission, charges, duties and taxes and that commodity after being specially branded or described will be sold at in that price to the consumer (the price must be printed clearly, visibly, legibly and indelibly on the surface of the goods or on their packet, bag etc.)

- (4) In the case of services, Value Added Tax will be imposed on the total receipts.

Provided that in the case of providing any specific service the Board, by an order, will be able to determine the amount of Value Added Tax on the basis of a rate fixed for addition of cost or actual addition of cost.

- (a) Goods on which trade discount is allowed; value added tax on such goods are based on the value at which it is supplied after deducting such discount. Provided that in case where goods are supplied at a discount, the value at which the goods are supplied and the amount of the discount will be shown on the invoice and the amount of trade discount must be consistent with the normal business policy.
- (b) Without prejudice to the remainder of this section, if the Board, on consideration of national interest and after any necessary inquiry becomes satisfied that the fixation of a tariff value is necessary in order to determine Value Added Tax, or where applicable Value Added Tax and Supplementary Duty in case of taxable goods or services then the Board will be able to fix a tariff value for the taxable goods or services by an order issued in a Gazette notification.

30.14 Determination of value, tariff value & truncated base value

Determination of value:

- ☐ As the realization of VAT in Bangladesh is still dependent on manufacturing level and the VAT is realizable on ad-valorem basis, so if the correct price/ value is not determined, the actual revenue could not be realized. But whenever the real VAT system will be implemented at all stages of goods and services the question of price/ value for VAT in Bangladesh may be dealt with relaxed approach.
- ☐ Value for VAT does not mean the actual value or sale value of a commodity or service. Actual value or sale value is determined by the manufacturer or trader or market. Here the value stands for the purpose of assessment of VAT at different stages only. So the question of value for VAT in Bangladesh is very important, though it is not important for the countries where the ideal VAT system is introduced at all stages like: import, manufacturing, trading and service rendering.
- ☐ Provisions regarding determination of value for VAT and SD are contained in section 5 and 7 of VAT Act and rule 3, 3ka, 3kaka, 3kha of VAT Rules. As per the current position of law the assessable value for VAT at different stages are to be calculated as mentioned below :

Import stage: Base value for VAT:

Assessable value for Customs Duty under section 25 or 25A of Customs Act + Customs Duty (CD) + Regulatory Duty (RD) + Supplementary Duty (SD) with other duties and taxes (if any), except AIT (advance income tax).

Other duties and taxes are Safeguard Duty (SGD), Countervailing Duty (CVD), and Antidumping Duty (ADD) etc.

Calculation of Value Added Tax (VAT) at import stage:

Based on:	If assessable value (AV) for customs duty (CD) is	Tk. 100.00
Value+CD+RD+SD	If rate of CD is	25% on AV
	If rate of RD is	3% on AV
	If rate of SD is	20% on (AV+CD+RD)
	& rate of VAT is	15% on (AV+CD+RD+SD)

Then amount of VAT is = Tk. $(100+25+3+26) \times \text{rate of VAT } 15\%$

or Tk. $154 \times 15\% = \text{Tk. } 23.10$

[i.e., Base of VAT = Tk. 154.00]

❑ Local stage:

Value of goods is determined by aggregating, the cost of inputs, other costs & charges, profit and commissions.

Goods (manufacturing): [(Value of inputs + Total expenses + Commission, charge, fee (if any) + all duties and taxes (if any), excepting VAT + Profit] + Supplementary Duty (if any)].

Calculation of taxes:

Value of inputs =	Tk.	154.00
Total expenses =		+30.00
Commission =		+ 4.00
Profit =		<u>+20.00</u>
Total cost =		208.00
Supplementary Duty @20% =		<u>+41.60</u>
Value for VAT = 208.00+41.60 =		<u>249.60</u>
So the amount of VAT= Tk. (249.60 x 15%) =Tk. 37.44		

[Assessable value for SD: The amount or consideration received or receivable from the buyer excluding the amount of SD and VAT.]

❑ Value for services :

Total receipts excluding VAT, but including Supplementary Duty (if any)].

Total receipt means-- Total money received or receivable including commission or charge, excepting VAT by the taxable service renderer in exchange of his services.[sec.2(bha)]

[Assessable value for SD: Total receipt excluding the amount of SD and VAT.]

Calculation of taxes :

Assessable Value (AV) of services for SD = Tk.	100.00
SD @ 20% on AV	20.00
Value for VAT (AV+SD)	120.00
VAT @ 15% on (AV+SD)	<u>18.00</u>
Value of services =	<u>138.00</u>

So total receipts (base of VAT) = 120.00, i.e., value including charges & commission and SD, but except VAT

Advanced Trade VAT (ATV)

- [((Customs assessable value + Customs Duty) + Regulatory Duty (if any) + SD (if any))+ 33.34% (value addition)] × 5%.
- Value to be declared under section 5(2) with the "form-1kha" (rule 3) to the divisional Officer of VAT for the next supply and taxes to be paid @ 15%.

❑ Tariff value – [section 5(7)]

NBR by notifications in the official gazette may fix the Tariff Value for SD and VAT in case of goods or services considering the importance of public interest and being satisfied after due enquiry.

Tariff value for goods was introduced to — [section 5(7), 5(4)]

- protect the interest of govt. revenue,
- protect the interest of the taxpayers who add low value to their goods/services,
- the items for which input credit system does not work properly and exist major evasion risks, the items for which easier and simple documentation and tax payment system is essential.

Some examples of tariff value (General Order No. 05/Musak/2018, dt. 07.6.2018):

Rapeseed oil	Tk. 6,667/KG
Handmade dry cake	Tk. 85/KG
Pickle (bottled)	Tk. 60/KG
Pickle (packed)	Tk. 70/KG
Tomato paste	Tk. 40/KG
Mango juice	Tk. 25/1000 ML pack
Newsprint	Tk. 10,000/MT

The tariff value is fixed only for the purpose of assessment and realization of VAT, it is not a market price or real price or total cost of the goods. It may be the value or amount equal or nearer to the amount of value addition or how much relax treatment the policy maker wants to consider for a certain sector or item. It is a distortion to the VAT system, but the government of Bangladesh has under taken this system on interim basis to address the trade reality.

Truncated base value

Truncated or short value system is one where VAT at standard rate (15%) is charged on the truncated value or deemed or estimated value addition. This price is not the actual nor do the market prices of the services not even the accurate amount of value addition. This may be nearer to the amount of value addition and used for the purpose of VAT assessment. Since this is based on a fraction of the value, input tax rebate cannot be obtained excepting on exports or deemed exports.

Sometimes, it becomes very difficult to avail VAT credit/adjustment facilities due to non-availability of invoices supporting the purchase of input. In order to remove this operational difficulty fixed bases such as 15%, 25%, 30%, and 60% value addition is taken into account for calculation of VAT for a number of goods and services. Thus, truncated value is the percentage of value addition on which VAT is applicable. At different level of value addition, VAT is payable at a rate as shown below:

Truncated base value (value addition)	Flat rate of VAT	VAT payable net rate
15%	15%	2.25%
20%	15%	3.0%
30%	15%	4.5%
60%	15%	9.0%

Truncated base value on services

In case of 18 taxable services, the value addition and the rates of net VAT are as follows (2018-19):

Sl.	Service name	Value addition	Truncated VAT rate
1.	Restaurant: (a) Air-conditioned	100%	15%
	(b) Non-AC	46.67%	7%
2.	Motor garage and workshop	66.67%	10%
3.	Dockyard	66.67%	10%
4.	Construction firm	46.67%	7%
5.	Land developer	20%	3%
6.	Building construction firm	1-1600 sft: 13.34%	2%
		1601 sft & above: 30%	4.5%
		Re-registration 13.34%	2%
7.	Internet organization	33.34%	5%
8.	Furniture Sales Centre	In factory: 46.67%	In factory: 7%
		In showroom: 33.34%	In showroom: 5%
9.	Goldsmith & silversmith	33.34%	5%
10.	Procurement provider	33.34%	5%
11.	Transport contractor	For petroleum products: 33.34%	For petroleum products: 5%
		For other goods: 66.67%	For other goods: 10%

Sl.	Service name	Value addition	Truncated VAT rate
12.	Electricity supplier	33.34%	5%
13.	Purchaser of auctioned goods	33.34%	5%
14.	English medium school	33.34%	5%
15.	Ready-made garments seller (own brand & except own brand)	33.34%	5%
16.	IT Enabled Services (S099.10)	33.34%	5%
17.	Social Media and Virtual Business	33.34%	5%
18.	Credit Rating Agency	46.67%	7%

30.15 Method and time of payment

Section 6 of VAT Act, 1991 provides relevant rules and provisions regarding the method and time of payment of VAT.

- (1) Value Added Tax on imported goods will be paid at the same time and in the same manner as import duty in accordance with rules made under and according to the Customs Act, as if the same was an import duty under that Act and in order to control any matter related to the said Value Added Tax or, where applicable, supplementary duty, the rules, orders and instruction under this Act remain applicable regards, in provision to that Act and under this Act, orders and instruction, as far as possible, will apply to Value Added Tax or, where applicable, supplementary duty in such way as it applies to import duty.
- (2) Value Added Tax will be payable on goods, which are produced, manufactured or imported, purchased or otherwise acquired in any other manner by any registered person in the course of supply by that registered person carrying on or expanding their business, at the time of one of the following activities whichever occurs first :-
 - a. When the goods are delivered or supplied;
 - b. When an invoice relating to the supply of goods is given;
 - c. When any goods are used personally or given for use to another person;
 - d. When partial or full value is received.
- (3) Value Added Tax, on services rendered by any registered person during running business or extension thereon, will be at the time of one of the following activities that occurs first.
 - a. When the service is rendered ;
 - b. When an invoice relating to the render of service is given.
 - c. When partial or full value is received.
 - d. When the price is paid partially by or fully, in case of services received from outside territory of Bangladesh.
- (4) Without prejudice to the remainder of this section the Board, under procedures specified by rule will be able to fix the time and procedure to pay Value Added Tax and supplementary duty on goods, class of goods or services along with payment in advance or provision regarding deduction at source.
- (5) Notwithstanding anything contained in sub-section (4), the Board may direct through official gazette to use security stamp or banderole or special sign or mark of specified value on the body of the package or container or pot of the goods or classes of goods for the purpose of realizing value added tax or, where applicable, supplementary duty from the date of such notification [section 6(4A)].
- (6) Notwithstanding any other provisions of this section, Value Added Tax payable by any service rendering person selected in this behalf by the Government, by notification in the official Gazette, from time to time, shall be collected or deducted at source, in the procedure specified by Board's order, at the time when the person receiving the service or, as the case may be, the person making payment of the value of the service or commission makes such payment and shall be deposited to the Government treasury:

Provided that in a case where, the Value Added Tax payable by any service provider under any project, has been collected or deducted and deposited to Government treasury at the time of payment of service value or commission by a person receiving service or, as the case may be by the person paying the service value or commission and if that service provider appoints any sub-contractor, agent or any other service rendering person, in such case Value Added Tax shall not be collected again at source from such sub-contractor, agent or any other service rendering person appointed by the principal service provider, subject to production or submission of documentary evidence of collection or deduction of Value Added Tax and the deposit of the same in the Government treasury [section 6(4AA)].

(7) In case of the services received by any government, semi-government or autonomous organization, NGO, bank, insurance organization or any other financial institution, limited company, educational institution and as the case may be, by any other office or organization; the Board may by an Order ascertain the list of such service providers with citing services codes thereof for the purpose of collecting Value Added Tax at source, deduction and depositing it to the government treasury by the recipient of the services [section 6(4AAA)].

(8) A person who realizes or deducts Value Added Tax at the source must give a certificate in respect of such realization or deduction to the person who renders the service according to a fixed procedure which will include the following information :

- a) The registration number of the Value Added Tax payer;
- b) The total value of services or commission paid for the service received;
- c) Value Added Tax imposable value of services or commission;
- d) Amount of Value Added Tax realized or deducted; and
- e) Any other necessary information [section 6(B)].

(9) If the person responsible for the payment of value of services or commission as per sub-section (4AA), failed to collect or deduct such value added taxes at source and also failed to deposit the same, then –

- (i) Such value added tax will be collected with 2% interest per month from the person paying the value of services or commission as if he was such a person of providing services under sub-section (4AA);
- (ii) Such value added tax collected, deducted and deposited under sub-section (4AA) shall be treated as paid under the provisions of this Act on behalf of the concerned service provider and may, subject to validity of the certificate issued under sub-section (4B), be shown in the return referred to in section 35 as paid by the concerned service provider;
- (iii) without any prejudice to the provisions of clause (i), in case of failure to deposit the deducted or collected value added tax in the Government treasury within two months from the date of such deduction or collection of value added tax at source, concerned Commissioner may impose a personal penalty, not exceeding Tk. 25,000, on the person responsible for collection or deduction, the person responsible for deposit and the chief executive officer of the concerned organization.

(10) Value Added Tax payable on goods supplied or services rendered, except at the time of importation, will be paid through the Account current register and the value added tax return in accordance with the methods prescribed in the Rules.

30.16 Books and documents to be maintained for VAT purposes

The following books and documents shall be maintained by a VAT payer:-

- Registration documents (Mushak-6 and Mushak-8)
- Valuation documents (Mushak-1 and relevant documents)
- Purchase records (B/ Entry or Mushak-11 or other invoice)
- Purchase register (Mushak-16)
- Sales invoice (Mushak-11)

- Sales register (Mushak-17)
- Treasury challan
- Account Current Register (Mushak-18)
- Copy of monthly return (Mushak-19)
- Other commercial documents.

These books and documents shall be maintained at the business place for at least 6 years.

Subject of documents (Books of Accounts)

The under mentioned books of accounts is prepared and maintained as per prescribed rules:

☐ Purchase register (Mushak-16)

All purchases of a taxable person should be entered in to the purchase register and maintained for 4 years.

☐ Sales register (Mushak-17)

All sales of a taxable person should be entered in to the sales register and maintained for 4 years.

☐ Account Current register (Mushak-18)

Accounts of all treasury deposit, payable taxes, adjustments and balance should be entered and maintained in this register.

☐ VAT return (Mushak-19)

Summary of tax liability of a registered person for a certain tax period (generally an English calendar month) along which some important matters of his business activities should be reflected.

30.17 Submission of VAT return

VAT return (Mushak Dakhilpatra/Mushak-19)

Return filling, analysis and responsibilities

VAT return is a summary of tax liability of a registered person for a certain tax period (generally an English calendar month) in which the under mentioned important matters of his business activities are reflected.

- ☐ Aggregation of sales
- ☐ Accounts of payable taxes
- ☐ Aggregation of purchase
- ☐ Accounts of deduction at source / rebate / duty drawback
- ☐ Final accounts and balance
- ☐ Accounts of deduction by supplier at source

Submission of return covering the statement of tax liability of every tax period by a manufacturer of taxable goods or trader or renderer of taxable services to the concerned officer (circle officer) within the specific date (15th of the next month, 20th of the next month incase of insurance) under prescribed form and procedure. Two copies of return on prescribed form Mushak-19 should be submitted (rule 24).

Examination of return

- ☐ The concerned officer will scrutinize the return according to the procedure prescribed by the Rules.
- ☐ If short payment of taxes is evidenced, the concerned officer will order, in case of product, to adjust the Account Current, and in case of service, to repay in prescribed manner for this purpose.

- ☐ In case of extra payment of taxes, the related officer will provide with the opportunity to adjust the Account Current on the next tax period.
- ☐ The officer concerned will arrange necessary survey, if needed to determine the appropriate input-output coefficient of a product or if the amount received instead of a service is shown less.
- ☐ If less tax is shown on the return or undue drawback is applied for, the related officer will have the jurisdiction to determine the amount of payable taxes along with the duty drawback, considering collected information or the result of survey, after hearing from the taxpayer.

Rule 25

- ☐ If the submitted return is found correct and appropriate after being scrutinized by the Assistant Revenue Officer and Revenue Officer of the concerned circle, it will be certified having signed along with sealed by the aforementioned officers; the certified return should be returned to the taxpayer within thirty (30) days.
- ☐ The Commissioner will send the main copy of the return to the DEDO, if the amount of debatable tax is high, in case of a larger exporter in comparison to a 100% exporter or a local supplier.
- ☐ If a registered person, who is bound to submit the Return, does not submit the return of a certain tax period, the related Assistant Revenue Officer will inform the Divisional Officer via the Revenue Officer for taking action under section 37.

30.18 VAT deduction/collection at source

- ☐ In VAT system, usually the purchaser of goods or receiver of services pays money and seller/supplier of goods or renderer of services receives money and deposit the amount of taxes to the Govt. treasury. It is the obligation of the supplier of goods or the renderer of services to deposit the taxes.
- ☐ In spite of the general procedure of paying VAT by the suppliers of goods or services, NBR may prescribe by rule make provision to determine the time and procedure for the payment of VAT and deduction of VAT at source in case of goods, class of goods or services.
[Section -6(4)].
- ☐ Under the rules prescribed by NBR payable VAT by a registered person should be realized or deducted at source and deposited it to the Govt. treasury at the time of payment of value or commission by the service receiver or the payer of the value or the commission.
[Section-6 (4 kaka)].

If any service renderer under a Foreign Aided project maintaining procedure determined by NBR through rule realize or deduct total payable VAT and deposit it to the Govt. treasury, and in this case if the documentary evidence of deducting and depositing VAT at the Govt. treasury is presented, no any amount of VAT shall be realized again from a sub-contractor, agent or other service renderer appointed by a service renderer for supply of a part of whole services. [section.(4 kaka)].

VAT is deductible at source from certain services at different net rates such as:

Sl.	Service code	Head of services	VDS rate (net)
(1)	(2)	(3)	(4)
01.	S 002.00	Decorators & caterers	15%
02.	S 003.10	Motor car garage & workshop	10%
03.	S 003.20	Dockward	10%
04.	S 004.00	Construction firm	7%
05.	S 007.00	Advertising firm	15%
06.	S 008.10	Printing press	15%
07.	S 009.00	Auctioneer	15%
08.	S 010.10	Land development firm	3%

09.	S 010.20	Building construction firm (a) 1-1600 sft (b) 1601 sft and above (c) In case of re-registration	2% 4.5% 2%
10.	S 014.00	Indenting firm	15%
11.	S 020.00	Survey firm	15%
12.	S 021.00	Plant and capital machinery renting firm	15%
13.	S 024.00	Furniture selling firm a) Production stage b) Sales stage (subject to payment of 7% at production stage)	7% 5%
14.	S 028.00	Courier & express mail service	15%
15.	S 031.00	Person, organization & firm engaged in repair or servicing of taxable goods in exchange of consideration	15%
16.	S 032.00	Consultancy firm and supervisory firm	15%
17.	S 033.00	Leaseholder	15%
18.	S 034.00	Audit and accounting firm	15%
19.	S 037.00	Procurement provider	5%
20.	S 040.00	Security service	15%
21.	S 045.00	Legal adviser	15%
22.	S 048.00	Transport contractor a) Transport of petroleum product b) Transport of other products	5% 10%
23.	S 049.00	Rent-a-car	15%
24.	S 050.10	Architect, Interior designer or Interior decorator	15%
25.	S 050.20	Graphic designer	15%
26.	S 051.00	Engineering firm	15%
27.	S 052.00	Sound and lighting equipment renting firm	15%
28.	S 053.00	Participant in Board meeting	15%
29.	S 054.00	Publicizer of advertisement through satellite channel	15%
30.	S 058.00	Chartered plane or helicopter renting firm	15%
31.	S 060.00	Purchaser of auctioned goods	5%
32.	S 065.00	Building floor and premises cleaning & maintenance firm	15%
33.	S 066.00	Lottery ticket seller	15%
34.	S 071.00	Program organizer	15%
35.	S 072.00	Human resource supply and management organization	15%
36.	S 099.10	Information Technology Enabled Services	5%
37.	S 099.20	Other miscellaneous service	15%
38.	S 099.30	Sponsorship services	15%
39.	S 099.60	Credit Rating Agency	7%

NBR may by order determine the list and code of services to realize or deduct VAT and deposit it to the Govt. treasury at the time of taking service by some organizations. [Section 6(4kakaka) & Rule-18ka].

The following persons are hereby empowered and responsible for deduction of VAT at source:-

- Government, Semi-Government, autonomous organization;
- NGOs;
- Bank, insurance companies or any other financial organization;
- Limited companies;
- Educational institutions
- Enterprise having annual turnover above Tk.1 crore.

➔ **Responsibilities of the organization deducting VAT at source:**
[Section-6(4kha), Rule-18(kha)]

Any person responsible for deducting VAT at source shall be liable to deposit deductible VAT against concerned Commissionerate code within 15 working days from the date of deduction. At the rate of 2% interest per month shall be recoverable, if the person failed to collect, deduct and deposit the same.

30.19 Refund & duty drawback

Refund

Applicability —

- ☐ VAT or SD or Turnover Tax paid or paid in excess inadvertence, erroneously or for misinterpretation or for other reason.
- ☐ Refund should not be given, if the application of refund is not submitted within six month of payment.
- ☐ Refund is not payable if there is any scope of adjustment against input tax credit.

Procedure —

- ☐ Apply in form TR-31 in triplicate to the divisional officer of VAT and for the custom house to the DC/AC nominated by commissioner.
- ☐ Sanction of refund by the D.O or DC/AC customs having confirm about the genuinely of the refund.
- ☐ Pre-audit by the office of the commissioner.
- ☐ Disposal of refund application within 90 days.

Export incentives, duty drawback

Almost every country in the world provides zero rate and incentives to encourage and boost export. Bangladesh is also maintaining the same policy.

Zero rate (0%) for all —

- ☐ Export
- ☐ Deemed export
- ☐ Foods and other goods supplied to a foreign going conveyances for consumption

Moreover there are incentives against export of some items. These are :

- ☐ Fish, textile, etc.
- ☐ Any person shall be entitled to drawback of Customs Duty (CD), SD, VAT, Excise Duty and all other duties and taxes paid on any input used in the manufacture or production of —
- ☐ exported goods or services; or
- ☐ goods or services deemed to have been exported; or
- ☐ any food or consumables mentioned in sub-section (2) of section 3.

No person shall be entitled to duty drawback, if —

- ☐ Advance Income Tax(AIT) is not paid;
- ☐ Determined by the Govt. in the official gazette in this respect the SD paid on any input used in the production or manufacture of goods exported.
- ☐ The drawback is not claimed within the 6th month of export or deemed export.

30.20 Consequences of non-compliance

Non-compliance covers a wider range of situations starting from registration to the collection and payment of VAT as per the provisions mentioned in VAT Act, 1991. According to Section 37 of the VAT Act, 1991, and Rule 4 & 35 of the VAT Rules, 1991, an assessed may be penalized for the following offences:

As per section 37(1), if any person:

1	Fails to apply for registration, even if it would have been necessary to apply for registration under this Act	Fine of not less than Tk. 10,000 and not more than Tk. 20,000.
2	Fails to submit any return within the specified date	Fine of not less than Tk. 10,000 and not more than Tk. 20,000.
3	Fails to inform the Value Added Tax Officer about any changes regarding registration	Fine of not less than Tk. 5,000 and not more than Tk. 10,000.
4	Fails to comply with any warrant under section 25	Fine of not less than Tk. 10,000 and not more than Tk. 30,000.
5	Fails to maintain documents, electronic cash register or point of sales (POS) software or computer	Fine of not less than Tk. 20,000 and not more than Tk. 50,000.
6	Violation of any other provisions of this Act	Fine of not less than Tk. 10,000 and not more than Tk. 30,000.

As per section 37(2), if any person:

	Offences	Penalties
2	<p>(a) Fails to submit tax invoice or submits an untrue tax invoice on important information, or</p> <p>(b) Fails to pay Value Added Tax or, where applicable, Value Added Tax and Supplementary Duty on goods supplied or service rendered by him being directed twice by the concerned Officer, or fails to submit the return for a tax period even after lapse of the due time specified for such submission, or</p> <p>(c) Submits untrue return in the context of important information, or</p> <p>(d) Attempts to evade Value Added Tax on supply of goods without recording information regarding sales in the sales register (Mushak-17) and in the Account Current register (Mushak-18), or</p> <p>(e) Attempts to evade Value Added Tax by not entering information regarding the purchase of inputs in the purchase register, or</p> <p>(f) Evades or attempts to evade Value Added Tax or takes or attempts to take duty drawback by submitting forged or false documents to a Value Added Tax officer, or</p> <p>(g) Despite being instructed by the concerned Value Added Tax Officer, a registered or worth of being registered person fails to furnish any information or document, or</p> <p>(h) Does not maintain any document or Electronic Cash Register or Point of Sales (POS) Software or computer which is required to be maintained under this Act or Rules; or destroys or alters or mutilates such documents or demonstrates it to be false of any accounts kept in computer through Electronic Cash Register or POS Software or any such document or does not keep those documents, Electronic Cash Register or POS Software or computer as per the requirements of this Act, or</p> <p>(i) Consciously makes a false statement or declaration; or</p> <p>(j) Obstructs or prevents from entering into his business place any Value Added Tax Officer authorized under this Act to inspect or seize any</p>	<p>(a) If tax evasion takes place, then, he will be liable to a monetary penalty of minimum half the amount or maximum of equal amount of the tax payable on the supply of concerned goods or services relating to the offence of tax evasion;</p> <p>(b) If the offence is of any other irregularities other than tax evasion, then he will be liable to a monetary penalty of a minimum of 20 (twenty) thousand taka and a maximum of 50 (fifty) thousand taka.</p>

Offences		
	<p>record, register or any other document, Electronic Cash Register or computer relating to Value Added Tax, or</p> <p>(k) Involve himself in receiving, taking possession or carrying out transaction of such goods despite knowing fully well or having sufficient reason to believe that Value Added Tax or as the case may be Value Added Tax and Supplementary Duty payable on such goods has been evaded, or</p> <p>(l) Takes input tax credit through false or forged invoice, or</p> <p>(m) Evades or attempts to evade Value Added Tax or Supplementary Duty by any other means, or</p> <p>(n) Issues Challan patra stating therein the amount of Value Added Tax even without being a registered person, or</p> <p>(o) Does not do anything as required or does anything which is not required under subsection (4A) of section 6, or</p> <p>(p) Delivers goods or renders services under this Act or the rules, without keeping sufficient balance required in the Account Current Register by which adjustment or payment of output tax can be made by accumulating the balance with deposited money and the credit due on input tax, or</p> <p>(q) Assists to do or does any activity described in clause (a) to (p), then that activity shall be treated as an offence and shall be penalized as maintained in the opposite Column.</p>	

Other provisions regarding offences and penalties are as follows:

1)	As per section 37(2A), any person has been fined for any offence under subsections (1) and (2) of section 37, He shall be obligated to pay, as per the provisions of section 55 the unrealized or less paid amount with interest or deposit the amount taken as refund or duty drawback.
2)	As per section 37(2B), If any person does not pay or remain unrealized or takes drawback or refund the Value Added Tax or, as the case may be, Value Added Tax and Supplementary Duty for wrong explanation, He shall pay the Value Added Tax or Supplementary Duty or other duties and taxes with interest as per the provisions of section 55 and section 37(3); and in that case no fine can be imposed upon him under this Act.
3)	As per section 37(3), if any registered service provider or VAT deducting authority fails to deposit tax or fine or other dues to the government treasury within prescribed time, he shall have to pay the unpaid tax liability together with 2% interest per month <i>except</i> the cases of ADR. [This provision shall not prejudice the function of any penal provisions regarding offence under the VAT Act and Rules.].
4)	<p>If the amount of VAT is not deducted at source and is not deposited to government treasury in due time by the deducting agency inspite of obligation to deduct and deposit the same, then-</p> <p>a. the Amount including interest will be collected from the deducting agency as if he is the supplier of goods or services.</p> <p>b) In case of failure to deposit the amount deducted at source, the person deducting or Chief Executive of the organization shall be liable to personal fine of not over 25 thousand by the Commissioner.</p>
5)	<p>As per section 37(4), notwithstanding anything contained in any other provision of this Act, if a registered person fails to pay VAT (including SD) within 3 months after notice has been served twice or does any offense twice within 12 months under section 38(2) or fails to register himself within 1 month from the date of the receipt of the notice under section 15(4), then –</p> <p>a) if he is a registered person, his business premises may be locked up and his registration may also be cancelled; and</p> <p>b) if he is a register able person, his business premises may be locked up.</p>

6)	Except in the case of punishment order given by a Special Judge Court, no penalty can be imposed of or business premises can be locked up under this section without giving the person concerned a reasonable opportunity of being heard, either in person or by his legal representative. A guilty person may be penalized by 3 months to 2 years jail or fined by the amount minimum of half to the VAT amount including supplementary duty or maximum of equal the amount or both [section 37(6)]by an special Judge.
7)	As per Rule 4(13a), if a enlisted person fails to pay the turnover tax determined by the Divisional Officer as per the rules, He may be fined with a maximum amount of Tk. 5,000 including 2% interest per month on unpaid amount.
8)	As per Rule 35, if a registered person fails to comply with any provisions of the VAT Rules, 1991, shall be liable to a penalty of an amount, being not less than half and not more than equal of the amount of value added tax (including SD) and the goods or services (where applicable) related to such contravention shall be forfeited to the Government. If there is no evasion, in that case minimum applicable amount of fine is 5 thousand and maximum of fine is ten thousand taka.

Worked Examples and Solutions

Worked example 1

Partex produces Duplex Board, declaring its price at Tk. 40,000 per metric ton. It received an order on 25 June 2017 from British American Tobacco (Bangladesh) Ltd to deliver 500 metric tons of duplex board on 27 June 2017. It intended to deliver the goods on 27 June if VAT could be paid by them. The company had a VAT deposit balance on the morning of 27 June 2017 amounting to Tk. 10,00,000.

Calculate the amount to be deposited by the company on 27 June 2017 to enable it to dispatch the goods on that date.

Solution 1

	Amount (Tk.)	Amount (Tk.)
VAT chargeable and payable on 500 MTs	$40,000 \times 500 \times 15\%$	30,00,000
Less: VAT deposit balance on the morning of 27 June 2017		10,00,000
Further VAT deposit to be made through Treasury Challan		20,00,000

Worked example 2

Asset Development & Holdings Ltd sold 3 apartments, S-1 of 1075 sft; M-2 of 1350 sft and D-4 of 2000 sft to Mr. Rashed in Asset Plaza in Gulshan, Dhaka at a cost of Tk. 6,000/sft for S-1, Tk. 6,500/sft for M-2 and Tk. 6,800/sft for D-4. The company wants to deliver the apartment to Mr. Rashed on 30 July 2018. The deed of agreement specifies that VAT is payable by Mr. Rashed. Calculate the VAT payable by Mr. Rashed.

Solution 2

Apartment	Plinth Area (sft)	Tk./sft	Total Cost (Tk)	Rate of net VAT	VAT Chargeable & Payable (Tk)
S-1	1,075	6,000	6,450,000	2%	129,000
M-2	1,350	6,500	8,775,000	2%	175,500
D-4	2,000	6,800	13,600,000	4.5%	612,000
				Total	916,500

Worked example 3

Modhumati Sweets deals in sweets and milk products at 74 Mirpur Road, Dhanmondi, Dhaka. It obtained registration for the purpose of turnover tax. It has declared that its yearly sales during the income year ending 30 June, 2017 would amount to Tk. 10,00,000; and it wants to pay turnover tax on a monthly basis. Calculate monthly turnover tax of Modhumati Sweets.

Solution 3:

	Amount (Tk.)	Amount (Tk.)
Turnover tax for the income year ending 30 June, 2017	$10,00,000 \times 3\%$	30,000
Monthly turnover tax	$30,000/12$	2,500

Worked example 4

- Explain tax base of VAT in Bangladesh.
- Write down the names of ten goods and services which are subject to VAT in Bangladesh.

Solution 4

- (a) Tax Base of VAT in Bangladesh

Tax base means the object with reference to which tax is charged and payable. In the Value Added Tax Act, 1991 the base of VAT is the output value addition of the assessee for concerned item. Here, however, input tax is to be credited or adjusted. Input tax means value added tax paid by a registered assessee on inputs imported/purchased by him.

- (b) According to the Section 3 of the VAT Act, 1991 goods & services subject to VAT in Bangladesh are listed below:

- all goods imported in Bangladesh except those mentioned in the 1st Schedule
- all goods supplied except those goods mentioned in the 1st Schedule of the VAT Act;
- all services provided in Bangladesh except services mentioned in the 2nd Schedule
- following services are also under VAT:
 - Hotel and Restaurant
 - Motor garage workshop
 - Construction firm
 - Audit and Accounting Firm
 - Advertising firm
 - Legal Advisor
 - Indenting firm

Worked example 5

An importer imported 100 pieces of motor cycle at CIF price of Tk.80,000 per piece. The clearing and incidental charge amounted to Tk.90,000 for the lot. He sold 90 pieces of cycle to a wholesaler at a margin of 10% exclusive of VAT which is 15% on the value of sale price. The wholesaler charged 5% commission to sell it to retailer to be sold from their sale centre. The retailer incurs cost @ Tk.1,000/- for maintenance & salary of persons of sale centre & charge cost plus 10% margin. Compute VAT to be borne by the consumer assuming that retailer sold 70 pieces of cycle in the month of June 2017.

Solution 5

Computation of VAT: Stage – 1: Importer

	Tk.
(a) Import price of imported Motor cycle at CIF price (80,000X100)	80,00,000
(b) (+) Clearing and incidental charge	90,000
(c) Total cost of input [a + b]	80,90,000
(d) (-) Input VAT recoverable	-
(e) Net cost of goods sold (for 100 units) [c-d]	80,90,000
(f) Net cost of goods sold (for 90 units) [e/100x90]	72,81,000
(g) (+) Margin @ 10%	7,28,100
(h) Selling price excluding VAT [f + g]	80,09,100
(i) (+) Output VAT @ 15% [h x 15%]	12,01,365
(j) Selling price including VAT [h + i]	92,10,465

Stage – 2: Wholesaler

	Tk.
Cost from Importer	92,10,465
(-) Input VAT recoverable	12,01,365
Net cost of goods sold	80,09,100
(+) Commission @ 5%	4,00,455
Total cost of goods sold	84,09,555
(+) Margin (Nothing extra)	-
Selling price excluding VAT	84,09,555
(+) Output VAT @ 15%	12,61,433
Selling price including VAT	96,70,988

Stage – 3: Retailer

	Tk.
Cost from Wholesaler (for 90 units)	96,70,988
Cost from wholesaler (for 70 units)	75,21,880
(-) Input VAT recoverable (for 70 units) (12,61,433*70/90)	9,81,115
Net cost of goods sold	65,40,765
(+) Maintenance and selling cost (1000*70)	70,000
Total cost of goods sold	66,10,765
(+) Margin @ 10%	6,61,077
Selling price excluding VAT	72,71,842
(+) Output VAT @ 15%	10,90,776
Selling Price including VAT	83,62,618

Stage – 4: Consumer

	Tk.
Cost from Retailer (for 70 units)	83,62,618
Cost per unit	119,466

VAT to be borne by the consumer

Description	Importer (90 units) TK.	Wholesaler (90 units) TK.	Retailer (70 units) Tk.	Consumer (70 units) Tk.
Output VAT	12,01,365	12,61,433	10,90,776	
(-) Input VAT	-	12,01,365	9,81,115	
Net VAT Payable	<u>12,01,365</u>	<u>60,068</u>	<u>1,09,661</u>	
Net VAT Payable (for 70 Units)	12,01,365*70/90	60,068*70/90	1,90,661	
	=9,34,395	=46,720		
VAT to be borne by consumer (for 70 units)	9,34,395	+46,720	+1,09,661	=10,90,776

- Each seller will deposit VAT to Treasury but the seller of next stage will deposit VAT after adjustment of recoverable VAT
- VAT is an indirect tax shift able to next purchaser & it ultimately passes to consumer who has to bear ultimate burden.

Worked example 6

- What is input VAT and input VAT rebate? Is there any time limit for getting the input tax rebate?
- What is VAT Current Account? Can a company dispatch any goods from its factory/ warehouse keeping credit balance in the current account?
- Zinnat Enterprise has Tk. 100,000 debit balance in its VAT current account at 01 June 2017. Following transactions were occurred during the month of June:
 - Deposit to treasury account Tk. 50,000 on 02 June
 - Sales Tk. 100,000 excluding VAT on 7 June
 - Purchases Tk. 75,000 excluding VAT 15 June
 - Sales Tk. 150,000 excluding VAT on 20 June
 - Sold good returned worth Tk. 50,000 on 25 June
 - Purchase of goods Tk. 100,000 excluding VAT on 29 June
 - Sales Tk. 200,000 excluding VAT on 30 June

Record the above transactions in VAT current account and show what will be closing balance in the VAT current account at the end of June.

Solution 6

- The VAT paid on the import/ purchase of materials and others inputs of the products manufactured is called input VAT. A manufacture/ supplier paying VAT at standard rate can get credit for the input VAT it paid against the sale VAT. The credit of input VAT is called input VAT rebate. There is time limit for getting this credit/ input VAT rebate. The rebate can be obtained within next two tax period (i.e. two months) after the month in which the input VAT was paid.

b) VAT current account is a statement where details (date wise) of treasury deposit for VAT, amount of VAT receivable/ input VAT, amount of VAT on sales (output VAT), any other adjustments on VAT payable/ receivable and the balance of net VAT payable or receivable after each transaction/ each date is shown. There is prescribed format for maintaining VAT current account, which is called Mushak-18: Account Current. No company is allowed to dispatch any goods from its factory/ warehouse keeping credit balance in the VAT current account, it must always be debit balance.

c) The transactions for June are recorded in VAT Account current as follows:

Account Current [Rule 22(1)]

VAT registration no.

Name: Zinnat Enterprise

Address:

Sl.	Date	Description of transaction	Purchase/ Sales book ref.		Treasur y deposit	VAT receiva ble	Other Adjust ment (if any)	VAT payable	Balance	Remar ks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	1/6/17								100,000	Dr.
1.	2/6/17	Treasury deposit			50,000				150,000	Dr.
2.	7/6/17	Sales						15,000	135,000	Dr.
3.	15/6/17	Purchase				11,250			146,250	Dr.
4.	20/6/17	Sales						22,500	123,750	Dr.
5.	25/6/17	Sales return				7,500			131,250	Dr.
6.	29/6/17	Purchase				15,000			146,250	Dr.
7.	30/6/17	Sales						30,000	116,250	Dr.
	Total for month				50,000	33,750		67,500	116,250	Dr.

Worked example 7

(a) B Ltd. will be amalgamated with A Ltd., which has a few VAT cases pending with the VAT appellate authorities. With reference to section 59 of the VAT Act, 1991, VAT authority sent a letter asking B Ltd. to make payment of VAT relating to those pending cases before starting amalgamation procedures. As a professional accountant having expertise in VAT matters, you have been asked by the management of B Ltd. to advise them.

Requirement:

Provide your opinion on the letter issued by the VAT authority in the case stated above.

(b) As an ICAB fellow member, after working long years, you moved to own practice. VAT is your specialty. Your retainer-basis client, „Smart Footwear Ltd.“ involves in export and domestic sale of footwear. This is your single largest fee client. Client provided you a chamber at management floor. As proactive advisor to clients on tax planning, you encourage client to gradually introduce process of claiming input VAT rebate and also train them on sensitive conducts not to land in fines/penalty. Section 37 of VAT law attracts fixed fine and variable penalty for certain offences. List includes offences of VAT evasion and offences of fixed fines. Smart Footwear use imported bonded materials for export orders. You came across incidents that Smart Footwear sold bonded materials in local market. This holds potential VAT action. You discussed this with management who requested you to stay quiet as the year has already passed by.

Requirements:

i) Write three critical suggestions for client to be careful in order not to run on penal actions u/s 37 that may be featured as VAT evasion.

- ii) Consider issue of breaching bond conditions. Identify threat(s) to any fundamental principles of professional ethics and professional threats, if any, arising from incidents and explain why the threat(s) arise and if you have any safeguards to mitigate the threat(s).

Solution 7(a)

VAT Act, 1991 and VAT Rules 1991 do not specifically address the issues relating to amalgamation. Transfer of assets and liabilities by amalgamating company to the amalgamated company is not transfer of any movable or immovable property within the control of the undertaking of a registered person or the transfer of ownership of his undertaking as set forth in section 59 of the VAT Act, 1991. In the amalgamation process, the shareholders of the companies desirous to be amalgamated approve the scheme at appropriate legal forum. During the amalgamation process, one of the companies is discontinued and the surviving company takes ownership of the assets and liabilities. If the name of the surviving company is changed, then the change must be approved with the respective regulatory body. In practice, clear directions are given by the appropriate legal forum with regard to the fiscal obligations, if any, of the reporting entity.

Whereas, section 59 of the VAT Act, 1991, is made applicable for transfer of ownership wherein the entity will remain there but only ownership is changed. Here in this case, the said shareholders are not transferring the movable or immovable property or ownership of the undertaking, rather assets belonging to their companies will be merged and they will remain owner thereof by holding shares in the amalgamated company. In the amalgamation process, the companies are merged alongside the merger of assets and liabilities owned by them. It is not the case where the transferor company will remain as a distinct entity like a usual seller would after transfer of its assets and liabilities.

As such, we advise you to let the authority know that section 59 of the VAT Act, 1991 is not made applicable to amalgamation scheme, unless the court so directs. For this claims, we advise you to follow the directives given by the court.

Solution 7(b)

(i) Section 37 of the VAT Act 1991 provides for offences and penalties. There are offences subject to fixed fines and there are offences leads to charges of VAT evasion.

Three critical suggestions I can make to Smart Footwear Ltd. to stay off charges u/s 37 are as follows:

- Selling goods (subject to VAT) without issuing VAT Invoice,
- Sales delivery without updating the same in Sales Book (VAT 17) and without recording the payable VAT on such sale in the Current Account (VAT 18),
- Selling goods without maintaining sufficient balance in the Current Account.

(ii) Smart Footwear Ltd. needs to pay zero (0) % VAT as they export their footwear. Moreover, they enjoy bonded facility for importing raw materials to produce these exportable goods. It came to our notice that they have sold some of these imported raw materials to local market. This is an illegal conduct that holds potential charges to revenue evasion. An illegal conduct is always illegal regardless of its age. Customs bond audit in future may detect this departure.

I understand that this is my single largest fee client; management keeps me in their respect and provided me space facility. When I spoke to the management, they wanted me to stay quiet as the incident is not current. I am an Accountant in public practice. The incident brings before me threats to fundamental principles like 'objectivity' and independence and it exposes me intimidation threat as I might lose my client resulting in reduced fee and increased cost for the space provided to me.

On the other hand, my engagement with Smart Footwear Ltd. is advisory, not statutory audit assignments which mean threats are there but not significant for me. It also doesn't come in my obligation to disclose the incident to revenue authority.

As my obligations to fundamental principles and to mitigate the identified threats, I shall consider following possible safeguards:

- Putting up the incident in writing to management (Board of Directors) with my views and the potential consequence that may result from such non-compliance,
- training department staff who are involved in the incident,
- Developing an internal control policy paper for the management to comply rules and regulations to avoid such non-compliance.
- If the management do not take a decision in future, I may consider resignation as a consultant

Worked example 8

Regent Company produces different consumer products. To produce their products they import some ingredients from China and use some local ingredients. To produce 10,000 pieces of AAA Makeup Box for November 2016 they procured and used following ingredients as per standard practice:

Ingredient A: 1,200 kg by Tk.517,440 where VAT was Tk.65,340, AIT (advance income tax) Tk.16,500, Customs Duties (CD) Tk.33,000 and Supplementary Duty (SD) Tk.72,600;

Ingredient B: 600 kg by Tk.356,345 where VAT was Tk.45,045, AIT Tk.11,000, CD Tk.66,000 and SD Tk.14,300;

Ingredient C: 800 kg by Tk.150,000 (VAT-exempted); and

Ingredient D: 10,050 pieces by Tk.138,000 where VAT was Tk.18,000.

Ingredients A and B were imported items and Ingredients C and D were locally procured from wholesale market. Standard Gas bill for such quantity of products was Tk.120,000 and Electricity bill was Tk.55,000 excluding VAT. Per unit costs were: Labor cost Tk.80, factory overhead Tk.90. Standard marketing overhead cost in total was Tk.50,000 and bank interest Tk.45,000 for November 2016. Company profit markup policy is 30% after charging all costs.

Company produced and sold 1,000 pieces of AAA Makeup Box in November 2016.

As a Manager (Costing & VAT) of the company you are required to submit Form VAT-1 for Product AAA and Form VAT-19 for the month of November 2016.

Requirements:

- Find out per unit AAA Makeup Box cost for Form VAT-1 and selling price.
- Determine the amount of input VAT that will be allowed as rebate in Form VAT-19 and net VAT payable for November 2016.

Solution 8

- Regent Company**
Computation of Sales price of AAA makeup Box

Particulars	Cost Excluding VAT	VAT Paid (Rebateable)
Ingredient A	4,35,600	65,340
Ingredient B	3,00,300	45,045
Ingredient C	1,50,000	0
Ingredient D	1,20,000	18,000
Gas bill (Rebate= 15% of cost x 80%)	1,23,600	14,400
	(1,20,000+3,600)	
Electricity bill (Rebate= 5% of cost x 80%)	55,550	2,200
	(55,000+550)	
Material Cost	11,85,050	1,44,985

Per unit Material Cost	11,85,050/10,000	118.51
Labor Cost		80.00
Overhead		90.00
Marketing overhead	50,000/10,000	5.00
Bank Interest	45,000/10,000	4.50
Per unit Product Cost		298.01
Profit	30%	89.40
Price before VAT		387.41
VAT	15%	58.11
		<u>445.52</u>

(ii) Output VAT (Tk. 58.11 x 10,000)	5,81,100
Input	1,44,985
VAT payable	<u>4,36,115</u>

As such cost per unit AAA makeup box will be Tk. 298.01. After adding Tk. 89.40 as profit the VAT assessable value will be Tk. 387.41. So the selling price to the customer will be Tk. 445.52.

Input VAT for the month of November 2016 may come to Tk. 1,44,985 and regent will be required to deposit Tk. 4,36,115 to the Government exchequer. The same will be reported in the VAT-19.

Assumptions made:

- VAT on Gas is 15% and Electricity is 5%
- Regent's name is there in B/E and the goods entered into the factory within Nov. 2016
- There will be no input VAT in connection with the marketing overhead

Worked example 9

- You are a professional practitioner where VAT practice makes an impression. You are supposed to peruse new VAT law and stay tuned to the on-going talks in media and meetings between NBR and Trade Bodies involving Govt's determination to introduce new VAT and SD Act, 2012 from July 01, 2019.
- Your client, Trims Ltd. involves in exports and local trading. Statement of Financial Position of Trims Ltd. as at 30.06.2017 shows a 'VAT Current Account' debit balance taka 50,000. VAT-18 stands agreed with Statement of Financial Position of the company. Formatted columns of VAT Account Current (Form VAT 18): Sl, Date, Description of transaction, Purchase/Sales book ref., Treasury Deposit, VAT receivable, Other adjustment (if any) VAT payable, Balance, Remarks. Transactions in July 2017:
 - VAT deposit taka 50,000 on July 01.
 - Sales (local) taka 200,000 excluding VAT on July 05.
 - Sales (exports) to A category factory in Savar EPZ taka 500,000/=
 - Sold goods returned worth taka 50,000 on July 15.
 - Purchase goods taka 100,000 excluding VAT July 20. Purchase return 50,000 excluding VAT same date.
 - Sales goods taka 450,000 excl VAT July 25. Treasury deposit same day 50,000.
 - Goods sold taka 50,000 July 28 but customer withheld VAT taka 7500 when paying to Trims Ltd.

Trims Ltd. delivered goods Tk 100,000 to a Singapore-bound ship at Chittagong Port on July 29.

- Trims Ltd. needs to pay honorarium to the members of its tender evaluate committee. But they are not sure as to whether VAT needs to be deducted at source.

- d) As an ICAB member, you are a VAT adviser to many large companies. You know about Panama papers leaks news story which put selected names of Bangladeshi under spotlight. One of your VAT clients name was seen in that list, truth of the report unconfirmed. Although there are legitimate ways of using tax havens, most of what has been going on is about hiding true owners, the origin of the money and avoiding tax thereon. VAT evasion is one of the crude tools of money launderers. You are in the center stage of a sensitive practice.

Requirements:

- Specify five salient changes supposed to be coming up in new VAT law from July 2019.
- Using the data in 4(ii) above, draw a VAT Current Account (VAT 18) for Trims Ltd. for the month of July, 2017
- Advise if Trims Ltd. is required to deduct VAT at source while paying such honorarium
- Evaluate any professional and ethical issues for yourself and your firm arising from the news story about Panama paper leaks. Set out the actions that you and your firm should take.

Solution 9(a)

The new VAT law, which was passed by the Parliament in 2012, is expected to be effective from July 2019. Major changes over the existing law are as follows:

- Universal VAT Rate:** There will be a universal VAT rate which may be 15% or lower. Presently there are many VAT rates (15%, truncated base, rates based on tariff value etc.)
- Threshold for registration and no Package VAT:** Annual turnover of 30 lacs is expected to be fixed for goods and services to have no VAT and thereby no VAT registration. That is, annual turnover below 30 lacs shall attract no VAT. Annual Turnover tax threshold is expected to be raised from taka 80. There will be no package VAT under the new law.
- No Price Declaration:** Price declaration for goods is expected to cease.
- Deduction of VAT at source:** Public limited companies; companies under LTU (VAT); Govt. entity; bank; insurance company or a similar financial institution; post-secondary educational institution and NGO will be considered as withholding entity.
- Input VAT Rebate:** 100% input VAT rebate can be taken by assessee.

Solution 9(b)

Trims Limited: VAT CURRENT ACCOUNT (Form VAT - 18), Rule 22(1)

VAT Registration No.....

SL	Date	Description of transaction	Purchase/Sale ref	Treasury Dep	VAT Receivable	Other Adjustment (if any)	VAT Payable	Balance
1	01.07.17	Opening balance						50,000
2	01.07.17	Treasury deposit	Challan	50,000				100,000
3	05.07.17	Sales(local)	S.B				30,000	70,000
4	11.07.17	Sales(exports, zero VAT)	S.B				-	70,000
5	15.07.17	Sales return	CN		7,500			77,500
6	20.07.17	Purchase	P.B		15,000			92,500

7	20.07.17	Purchase return	DN			7,500	85,000
8	'25.07.17	Sales	S.B			67,500	17,500
9	'25.07.17	Treasury deposit	Challan	50,000			67,500
10	'28.07.17	Sales	S.B			7,500	60,000
11	'29.07.17	Sale to Outer Ship(zero VAT)	S.B			0	60,000
		TOTAL FOR THE MONTH		100,000	22,500	112,500	60,000

Closing Balance of VAT Current Account at the end of July 2017 is Taka 60,000 Debit. Trims Ltd. may claim VAT of Tk. 7,500 as treasury deposit after obtaining the treasury challan in support of the Vat DEDUCTION AT SOURCE FROM ITS CUSTOMER. However, as per the general order, VAT should not be deducted at source from a supplier who supplies goods along with VAT Challan considering VAT @ 15%. As such they should negotiate the same with the customers.

Solution 9(c)

As per SRO, VAT deduction at source is applicable on remuneration of board members. The person involved in the tender evaluation committee renders personalized services which is exempt from VAT as per the 2nd schedule of VAT Act, 1991. As such VAT is not deductible from remuneration as per VAT Act, 1991

Solution 9(d)

Panama paper leaks story is all about sheltering of assets secretly at offshore tax heavens. Offshore tax shelters may be legal, but the ethicality of using them to eliminate taxes is highly irregular. One my client name is on alleged list of names. I shall maintain that client be requested to fully investigate the alleged story to confirm its truth. I see no connection of myself and my firm with such alleged leak story naming my client. However I find this as an alert signal for me and my firm to reposition the way of client dealing. I see that two major fundamental ethical principles 'Professional behavior' and 'confidentiality' are likely to be impaired at allegation like panama paper leaks. 'Familiarity threats' and 'self-interest threat' are likely to crop up in such circumstances as the leak story got in wider media. The news story obliges me to review my and my firm's conduct at clients to examine if our conduct does discredit the profession. I have also examined if the leak story pops up any threats to our compliance to these principles. I am a Professional Accountant in Public practice. As I am not connected whatsoever with the story linking a VAT client, I do not see any significant threat that may impair those fundamental principles.

As action steps, I shall (i) meet client management and discuss with him the leak story linking his name and for further investigation, (ii) advise client to engage a lawyer to deal with the alleged story, (iii) request client in writing to arrange training for the key staff on money laundering and cross-border transactions, (iv) request client in writing to introduce a Code of Conduct for the employees. If the allegation is found true, I would elect to distance from the service of this client. I shall review my Firm's Code of Conduct to make that current with time, shall schedule training for the Firm's staff on money laundering and code of conduct. Public interest must be upheld by us as ICAB member. Accountants must not forsake ethical responsibilities when working for wealthy clients. We must not let lose privilege of our self-regulation.

Self-assessment questions:

1. What do you mean by "Value Added Tax"?
2. What is the rate of VAT? When different rates are applied?
3. Name the laws that regulate VAT.
4. Name five goods that are exempted from payment of VAT.

5. Name five services that are exempted from payment of VAT.
6. Who are required to register for the purposes of VAT?
7. When such registration is required?
8. What documents are required to be submitted for such registration?
9. Is there any fee payable for such registration?
10. Is there renewal of such registration required?
11. What books and documents are to be maintained by a registered taxpayer?
12. For how many years such books and documents are to be maintained by such a taxpayer?
13. Name five services on which VAT is deductible at source.
14. At what rates VAT is deductible at source?
15. Who are responsible for deduction of VAT at source?
16. What may be the consequences for not deducting and not depositing VAT at source?
17. Name the VAT authorities under the VAT Act, 1991.
18. What do you mean by "Turnover Tax"?
19. What is the rate of Turnover Tax?
20. When and how turnover tax is paid?
21. Who are required to register for the purposes of turnover?
22. Who cannot register for the purposes of turnover?
23. What documents are required to be submitted for such enlistment?
24. Is there any fee payable for such enlistment?
25. Is there renewal of such enlistment required?
26. What books and documents are to be maintained for the purposes of Turnover Tax?
27. For how many years such books and documents are to be maintained by such a taxpayer?
28. Differentiate between Value Added Tax and Turnover Tax.
29. What do you mean by "input tax"?
30. What conditions are to be met for claiming credit of input tax?
31. What do you mean by "Supplementary Duty"?
32. What are various rates of Supplementary Duty?
33. Name five goods on which Supplementary Duty is chargeable.
34. Name five services on which Supplementary Duty is chargeable with rates.



Chapter 31

Ethics

Contents

Introduction
Examination context

Topic list

31.1	Fundamental principles
31.2	Threat and safeguards framework
31.3	Ethical conflict resolution
31.4	Disclosure of information
31.5	Conflict of interest
31.6	Basic principles of taxation work
31.7	Tax authorities errors
31.8	Anti-money laundering
31.9	Tax evasion Vs. tax avoidance

Introduction

Learning objectives

Identify the guidance given in the IFAC Code of Ethics for Professional Accountants in relation to tax practice with regard to:

- Identify ethical issues arising from tax work undertaken, explain the relevance and importance of these issues and provides guidance in given scenarios
- Differentiate between tax avoidance and tax evasion
- Judge when to refer matters for specialist help

Practical significance

Belonging to a professional body requires adherence to a code of ethics and have had claims for breaches of confidentiality. This is part of what differentiates a Chartered Accountant from unqualified accountants. Clients, members of the public, and the government recognize that we are required to adhere to exacting standards and so expect a certain standard of behavior from us.

Money laundering has been a major problem in the past and as part of new laws designed to combat this, professionals are required to participate in its prevention by reporting certain suspicions relating to the proceeds of crime.

Stop and think

Accountants have been penalized for non-compliance with the Code of Ethics. Even in the short time, that the anti-money laundering regulations have existed, accountants have been prosecuted. It is essential that professional accountants should act ethically in all of their work.

What sort of questions should you ask a potential client apart from the obvious ones?
Should you always do what the client wants whether you agree or not?

Working context

Ethical considerations underpin all of your studies as well as your work experience. You will often make ethical decisions without even realizing it, but sometimes you may find yourself in a quandary and be unsure how to act. This is when the Code of Ethics will be of assistance. You need to know what to look out for and how to act. You should always take particular care in relation to client confidentiality; not always an easy task.

Syllabus links

The topics covered in this chapter are essential knowledge for the whole of your Taxation studies. They will ensure that advice and communication is appropriate and in keeping with the requirements of the ICAB.

Examination context

Exam requirements

In the examination, students may be required to:

- Apply the five fundamental principles to given scenarios
- Determine safeguards to be put in place when threats are made to the fundamental principles
- Advise on the ethical resolution of conflicts
- Give appropriate guidance relating to conflicts of interest and money laundering

Question practice

For question practice on these topics, go to the end of this manual covering this chapter

31.1 Fundamental Principles

Section overview

- ➔ The International Federation of Accountants (IFAC) has produced a Code of Ethics for professional accountants (IFAC Code).
- ➔ ICAB has adopted and published IFAC Code of Ethics for ICAB Members.
- ➔ The IFAC Code aims to ensure high quality ethical standards for use by professional accountants around the world.
- ➔ Part A of the IFAC Codes (the Codes) establishes the fundamental principles of professional ethics for accountants.

Definition

Professional accountant: A member of the ICAB.

The Codes require a professional accountant to comply with the following five fundamental principles:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behavior

The purpose of this chapter is to provide background information which will assist your understanding of the framework of the Bangladesh taxation system, why governments impose tax and the principles of taxation.

The Bangladesh taxation system has developed over centuries from the then British India in 1860 to the present condition on a piecemeal basis. Successive ruler and governments have changed the taxation system in accordance with their need.

Integrity

Definition

Integrity: Requires all professional accountants to be straightforward and honest in professional and business relationships.

A professional accountant should not be associated with any information where he believes that the information:

- Contains a materially false or misleading statement
- Contains statements or information furnished recklessly
- Omits or obscures information required to be included where such omission or obscurity would be misleading

Objectivity

Objectivity: Imposes an obligation on professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.

Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided.

Professional competence and due care

Professional competence and due care: Requires professional accountants to:

- Maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service based on current developments in practice, legislation and techniques; and
- Act diligently in accordance with applicable technical and professional standards when providing professional services.

Competent professional service requires competence to be achieved in two phases:

- Attainment of professional competence; and
- Maintenance of professional competence, requiring a continuing awareness and understanding of relevant issues.

Steps should be taken to ensure that those working for the professional accountant have appropriate training and supervision.

Any limitations relating to the service being provided must be made clear to clients and other users to ensure that misinterpretation of facts or opinions does not take place.

Confidentiality

Confidentiality: Imposes an obligation on professional accountants to refrain from:

- Disclosing outside the firm confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

A professional accountant should maintain confidentiality even in a social environment. The professional accountant should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family member.

A professional accountant should also consider the need to maintain confidentiality of information within the firm. All reasonable steps should be taken to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

A professional accountant should also maintain confidentiality of information disclosed by a prospective client or employer.

The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

Professional behavior

Professional behavior: Imposes an obligation on a professional accountant to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession.

This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.

Professional accountants should be honest and truthful and should not:

- Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained
- Make disparaging references or unsubstantiated comparisons to the work of others

31.2 Threats and safeguards framework

Section overview

- ➔ The circumstances in which professional accountants operate may give rise to specific threats to compliance with the five fundamental principles.
- ➔ The Codes provide a framework to help identify, evaluate and respond to these threats.
- ➔ The professional accountant is then able to apply safeguards to eliminate the threats or reduce them to an acceptable level.
- ➔ As a result, compliance with the five fundamental principles is not compromised.

Threats

The professional accountant is obliged to evaluate any threat as soon as he knows, or should be expected to know, of its existence.

Both qualitative and quantitative factors should be taken into account in considering the significance of the threat.

Most threats to compliance with the fundamental principles fall into the following categories:

- **Self-interest threats**, which may occur as a result of the financial or other interests of a professional accountant or of an immediate or close family member
- **Self-review threats**, which may occur when a previous judgment needs to be re-evaluated by the professional accountant responsible for that judgment
- **Advocacy threats**, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised
- **Familiarity threats**, which may occur when, because of a close relationship, a professional accountant becomes too sympathetic to the interests of others
- **Intimidation threats**, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived

Safeguards

If a professional accountant cannot implement appropriate safeguards, he should decline or discontinue the specific professional service involved, or where necessary resign from the client.

Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories:

- Safeguards created by the profession, legislation or regulation.
- Safeguards in the work environment.

Safeguards created by the profession, legislation or regulation include, but are not restricted to:

- Educational, training and experience requirements for entry into the profession
- Continuing professional development requirements

- Corporate governance regulations
- Professional standards
- Professional or regulatory monitoring and disciplinary procedures
- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant

Certain safeguards may increase the likelihood of identifying or deterring unethical behavior. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organization, include, but are not restricted to:

- Effective, well publicized complaints systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior
- An explicitly stated duty to report breaches of ethical requirements

The nature of the safeguards to be applied will vary depending on the circumstances. In exercising professional judgment, a professional accountant should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

31.3 Ethical conflict resolution

Section overview

- ➔ To ensure compliance with the fundamental principles a professional accountant may need to resolve a conflict in applying the principles.
- ➔ The conflict resolution process may be formal or informal.
- ➔ In both cases the same steps are to be followed.

Conflict resolution process

When initiating either a formal or informal conflict resolution process, a professional accountant should consider the following five factors:

- Relevant facts
- Relevant parties
- Ethical issues involved
- Fundamental principles related to the matter in question
- Established internal procedures
- Alternative courses of action

Having considered these issues, the appropriate course of action can be determined which resolves the conflict with all or some of the five fundamental principles. If the matter remains unresolved, the professional accountant should consult with other appropriate persons within the firm for help in obtaining resolution.

Where a matter involves a conflict with, or within, an organization, a professional accountant should also consider consulting with those charged with governance of the organization.

It is advisable for the professional accountant to document the issue and details of any discussions held or decisions taken, concerning that issue.

If a significant conflict cannot be resolved, a professional accountant may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby obtain guidance on ethical and legal issues without breaching confidentiality.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant should, where possible, refuse to remain associated with the matter creating the conflict.

The professional accountant may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement or the firm.

Interactive question 1: Ethical conflict resolution [Difficulty level: Exam standard]

Mr. X, a member of the ICAB, is the reporting accountant of a pension company. Over the years he has developed a close working relationship with the finance director Mr. Y.

Recently he has become concerned about the financial controls within the company being overridden by Mr. Y, with the possibility of substantial funds being withdrawn from the company bank account. Mr. X discussed this at a formal end of audit meeting with Mr. Y, who assured him that the issue would be rectified immediately but that she felt there was no real issue and the controls were overridden for good reasons.

Mr. X is not satisfied with the explanations given and wishes to take further steps to resolve the ethical conflict.

Requirement: Outline the options open to Mr. X

Answer

Mr. X may first approach the other directors of the company in order to resolve the ethical conflict with Mr. Y. If this course of action does not give Mr. X sufficient comfort that the conflict is resolved he will have to consider going outside the company.

Mr. X may obtain professional advice from the ICAB or the legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. Mr. X should consider obtaining legal advice to determine whether there is a requirement to report.

If the ethical conflict remains unresolved, Mr. X should refuse to remain associated with the matter creating the conflict. He may determine that, in the circumstances, it is appropriate to resign altogether from the engagement.

31.4 Disclosure of information

Section overview

- ➔ Part A of the Codes contains a section relating to confidentiality.
- ➔ The confidentiality section explains when a professional accountant may disclose information to third parties without threatening the fundamental principle of confidentiality.

When to disclose

A professional accountant may disclose confidential information if:

- Disclosure is permitted by law and is authorized by the client or the employer
- Disclosure is required by law, for example:
 - Production of documents or other provision of evidence in the course of legal proceedings, or
 - Disclosure to the appropriate public authorities of infringements of the law, e.g. under antimony laundering legislation
- There is a professional duty or right to disclose, when not prohibited by law:

- To comply with the quality review of a member body or professional body
- To respond to an inquiry or investigation by a member body or regulatory body
- To protect the professional interests of a professional accountant in legal proceedings
- To comply with technical standards and ethics requirements

Factors to consider regarding disclosure

In deciding whether to disclose confidential information, professional accountants should consider the following:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant
- Whether all the relevant information is known and substantiated, to the extent it is practicable to do so. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any
- The type of communication that is expected and to whom it is addressed; in particular, professional accountants should be satisfied that the parties to whom the communication is addressed are appropriate recipients

Worked example: Disclosure of information:

You have just obtained Mr. Jamal as a client. He has a source of income which may or may not be taxable depending on his personal circumstances which are uncertain.

Requirement

Discuss the ethical considerations you must bear in mind when deciding whether to disclose the income on his tax returns.

Solution

There is a possible legal obligation to disclose the source to Tax Authorities, but the situation is unclear.

You must use your professional judgment, based on all facts. If disclosure is not to be made the exact reasons for non-disclosure should be recorded and Mr. Jamal advised of the reason for non-disclosure.

If you decide that disclosure is required, the client should be notified. If he does not accept the advice, you should decide whether you can continue to act for Mr. Jamal

Interactive question 2:

You are a Chartered Accountant and working in Y Ltd. ("Company") as a tax manager. The Company is engaged in the business of export of the goods manufactured by it. The bank, through which export proceeds of Y Ltd. is received, deducts tax at the specified rate from the total export proceeds in accordance with the provisions of section 53BB of the Income Tax Ordinance ("ITO"), 1984. Export income of Y Ltd. falls under the scope of section 82C of the ITO, 1984. Generally, the Company does not have additional income from export as referred to in section 82C (6) of the ITO, 1984.

In the income year 2015-16, a warehouse owned by the company was leased out to another company for a term of 3 years. Y Ltd. received rent on the warehouse for the income year 2015-16 but no tax was deducted at source from the rent paid by the lessee. The management of Y Ltd. is thinking of assessment of income of the company for the income year 2015-16 under section 82C of the ITO, 1984, upon considering the tax collected at source by the bank from the export proceeds as minimum tax. In a meeting with the management

team of Y Ltd. on tax issues, you have been asked to consider whether it is possible to ignore income from house property so that no demand for additional income tax arises. To discuss the issue further, a meeting would be held next week.

Requirements

- (a) Prepare a briefing note as regards tax evasion, tax avoidance and professional ethics to be followed by a Chartered Accountant rendering taxation services.
- (b) Enumerate the steps should be taken to deal with unethical request from the management, if any.

Solution

- (a) Briefing Note for the Management Team

Subject: Tax Evasion, Tax Avoidance and Professional Ethics to be followed by a Chartered Accountant rendering Taxation Services.

Tax Evasion:

Tax evasion is unlawful dodging in tax payments by tax payers. It is a process whereby a person illegitimately pays less tax than the law mandates. Tax evasion often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, overstating deductions or suppressing turnover.

Tax Avoidance:

On the other hand, tax avoidance is the process whereby a person plans his or her finances so as to apply all exemptions and deductions provided by tax laws to reduce taxable income. Through tax avoidance, a person takes advantage of all legal opportunities to minimize his or her tax. Tax avoidance must be distinguished from Tax Evasion, which is the employment of unlawful methods to circumvent the payment of taxes. Tax evasion is a crime; tax avoidance is the legal way to reduce tax burden.

Professional Ethics to be followed by a Chartered Accountant rendering Taxation Service:

A professional accountant rendering taxation service is entitled to put forward the best position in favor of his employer provided the service is rendered with professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the professional accountant consistent with the law. Doubt may be resolved in favor of the employer if there is reasonable support for the position. A professional accountant should not hold out to an employer the assurance that the tax return prepared and the tax advice offered are beyond challenge. Instead, the professional accountant should ensure that the employer are aware of the limitations attaching to tax advice and services so that they do not misinterpret an expression of opinion as an assertion of fact. A professional accountant should not be associated with any return or communication in which there is reason to believe that it:

- (i) Contains a false or misleading statement;
 - (ii) Contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or
 - (iii) Omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.
- (b) In light of the aforementioned academic discussion, I will take following steps if there is any unethical request from my employer:
- (i) I will put my tax advice on record, either in the form of a letter or in a memorandum, while providing the requested opinions on ignoring/concealing income from house property.

- (ii) I will let my employer know the consequences of error/omission/concealment of income as provided in the income tax laws for the time being in force and will recommend that appropriate disclosure be made to the revenue authorities.
- (iii) If my employer does not accept my suggestion, I will inform them that it is not possible to act for them in connection with the evasion of tax or pertinent return of income.
- (iv) I will follow the established policies of Y Ltd. to seek a resolution of such conflict.
- (v) If those policies do not resolve the ethical conflict, I will brought the problem to the notice of the next higher reviewing level such as the Executive Committee, Board of Directors or Shareholders. I will also seek counseling and advice on a confidential basis with an independent advisor to obtain an understanding of possible courses of action.
- (vi) If the ethical conflict still exists, I will consider whether continued association with Y Ltd. in any capacity is consistent with professional responsibilities and as a last resort I may have no other recourse on the tax evasion issue than to resign and to submit an information memorandum to an appropriate representative of Y Ltd.

31.5 Conflicts of interest

Section overview

- ➔ Part B of both the IFAC Code and the ICAEW Code illustrate how the fundamental principles are applied in certain situations for professional accountants in public practice.
- ➔ One of the illustrations given in part B contains details relating to conflicts of interest.

The threat of a conflict of interest

A professional accountant should take reasonable steps to identify circumstances that could pose a conflict of interest. These may give rise to threats to compliance with the fundamental principles. A conflict may arise between the firm and the client or between two conflicting clients being managed by the same firm. For example where a firm acts for:

- A Client which has specific interests which conflict with those of the firm;
- Financial involvements between the client and the firm eg where a loan is made by or to a client;
- Both a husband and wife in a divorce settlement ;
- A company and for its directors in their personal capacity; or
- Two competing business

Evaluation of threats includes consideration as to whether the professional accountant has any business interests or relationships with the client or a third party that could give rise to threats. If there are other than clearly insignificant, safeguards should be considered and applied as necessary.

Safeguards

Depending upon the circumstances giving rise to the conflict, safeguards should ordinarily include the professional accountant in public practice:

- Notifying the client of the firm's business interest or activities that may represent a conflict of interest
- Notifying all known relevant parties that the professional accountant is acting for two or more parties in respect of a matter where their respective interests are in conflict
- Notifying the client that the professional accountant does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service)

In each case the professional accountant should obtain the consent of the relevant parties to act.

Where a professional accountant has requested consent from a client to act for another party (which may or may not be an existing client) and that consent has been refused, then he must not continue to act for one of the parties in the matter giving rise to the conflict of interest.

The following additional safeguards should also be considered:

- The use of separate engagement teams
- Procedures to prevent access to information (eg strict physical separation of such teams, confidential and secure data filing)
- Clear guidelines for members of the engagement team on issues of security and confidentiality
- The use of confidentiality agreements signed by employees and partners of the firm
- Regular review of the application of safeguards by a senior individual not involved with relevant client engagements

Where a conflict of interest poses a threat to one or more of the fundamental principles that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant should conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.

Interactive question 2: Conflict of interest (Difficulty level: Exam standard)

A professional Accountant in Public Practice has had two partners, Mr. S and Mr. R as clients for many years. Mr. S is intending to sell his share of the partnership to Mr. R so that can continue as a sole trader. Both have asked if you will be their advisor.

Requirements

Outline the accountants' position with regard to the potential conflict of interest.

Answer

The firm should not usually act for both parties in a transaction. However this can cause particular problems where both have previously been clients.

There are available options,

The firm has three options,

- To act for both
- To act for one
- To act for neither

In a situation where there is an element of doubt, the latter is probably the preferred course of action.

31.6 Basic principles of taxation work

Section overview

- ➔ One of the topics included in the statement is an explanation as to the accountant's relationship with the client.

Agent or principal

It is very important that it is understood when an accountant is acting as an agent on behalf of a client and when he is acting as the principal. The two different capacities carry different degrees of risk and potential liability.

An explanation as to when an accountant is acting in each capacity should be given in a client engagement letter. The letter should also explain the scope of the client's and the accountant's responsibilities in each case.

Agent

An accountant acts as agent when he merely prepares documents on behalf of a client. The client retains responsibility for the accuracy of the document itself. The accountant is thus an agent when performing tax compliance work such as preparing and submitting a tax return on behalf of a client. The client would be required to sign the return prior to its submission.

The accountant takes no responsibility for any information which he passes on to the tax authorities when acting as an agent. The accountant is not normally liable if any of the information proves to be incorrect.

Acting as an agent is therefore considered to be a low risk activity.

Principal

An accountant acts as principal when he provides advice to the client as to the taxation consequences of different courses of action. The accountant takes full responsibility for the advice given and may be liable to the taxpayer in the event the advice turns out to be incorrect or inappropriate.

Where an accountant does not have the professional skill required to act as a principal in a particular case he may still accept the engagement. However, he must ensure that the opinion of a suitably qualified accountant is sought.

Acting as a principal is therefore considered to be a high risk activity.

31.7 Tax authority's errors

Section overview

→ One of the topics included in the statement is Tax Authority's errors.

Tax authority's errors

It may be apparent to the professional accountant that a mistake has been made by Tax Authorities, such as:

- The raising of an inadequate assessment
- An under collection of tax or interest
- An over repayment of tax or interest

The mistake may be

- Misinterpretation of law
- A calculation or clerical error
- A misunderstanding on the part of tax Authorities of the facts as presented

Professional accountants are advised to include in their letters of engagement authority to advise Tax Authorities of errors, so that consent from the client is not needed. Where no such authority has been obtained, the procedure set out below must be followed.

Where the accountant becomes aware that Tax Authorities, in full possession of the facts, has made a material error in dealing with the affairs of a client, the professional accountant should seek the client's authority to write to Tax Authorities for correction of error.

In cases of a Tax Authorities error, the professional accountant should refer the matter to the client. The client should be:

- Asked to authorize the professional accountant to advise Tax Authorities of the error; and
- Warned of the possible legal consequences if he is reluctant to give the authority sought, including interest and penalties and possible criminal prosecution; and
- Advised that if consent is not given, the accountant will consider taking independent legal advice with a view to:
- Notifying Tax Authorities in any event, and notifying the client of his action; and
- Ceasing to act for the client.

The professional accountant should ensure that a written record is kept of all advice given to clients in connection with Tax Authorities errors.

If a professional accountant is specifically asked by Tax Authorities to agree a figure, he must agree what he believes to be the correct figure; this may be a figure negotiated in the course of discussions following full disclosure of the facts and circumstances. He may not accept a figure he knows to be incorrect, and he does not need to seek his client's authority to disclose to Tax Authorities its errors in this case.

31.8 Anti-money laundering

Section overview

- ➔ Money Laundering Prevention Act, 2002 has been published with the purpose of combating money laundering
- ➔ Accountants should comply the requirement relating to money-laundering

Money laundering

Definition

Money laundering is the process of changing large amounts of money obtained from crimes, such as drug trafficking into origination from a legitimate source.

Money Laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of criminal activities. If successful, the money can lose its criminal identity and appear legitimate.

In terms of section 2 (tha) of Money Laundering Prevention Act, 2002, "Money Laundering means

- (a) Properties acquired or earned directly or indirectly through illegal means;
- (b) Illegal transfer, conversion, concealment of location or assistance in the above act of the properties acquired or earned directly or indirectly through legal or illegal means."

In this Act, "Properties means movable or immovable properties of any nature and description".

The term Money Laundering is used for a number of offences involving the proceeds of crime or terrorist funds. It now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.

Someone is engaged in money laundering under where they:

- Acquire or earn properties directly or indirectly through illegal means
- Transfer, convert, conceal location or assist in the above act of the properties acquired or earned directly or indirectly through legal or illegal means

Where a professional accountant suspects that a client is involved in money laundering he should report this to the authorities.

Tax related offences

Tax related offences are not in a special category. The proceeds or monetary advantage arising from tax offences are treated no differently from the proceeds of theft, drug trafficking or other criminal conduct.

Anti-money laundering procedures

Business needs to maintain some procedures:

Appoint a Money Laundering Reporting Officer (MLRO) and implement internal reporting procedures

- Train staff to ensure that they are aware of the relevant legislation, know how to recognize and deal with potential money laundering, how to report suspicions to the MLRO, and how to identify clients
- Establish internal procedures appropriate to deter and prevent money laundering, and make relevant individuals aware of the procedures
- Verify the identity of new clients and maintain evidence of identification
- Maintain records of client identification, and any transactions undertaken for or with the client
- Report suspicions of money laundering

Records of client identification and transactions also need to be maintained for few years.

Client confidentiality in relation to money laundering

An accountant should disclose confidential information without client consent in certain circumstances. In order to disclose confidential information, the accountant must have knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that a person has committed a money laundering offence.

Disclosure without reasonable grounds for knowledge or suspicion will increase the risk of a business or an individual being open to an action for breach of confidentiality.

Punishment for money laundering

If any person is engaged in Money Laundering in any way he will be regarded as a person who has committed a crime and the concerned accused for that crime will be sentenced to imprisonment for at least a period of six months and a maximum of seven years and will be fined for an amount not exceeding double the amount involved in the crime.

31.9 Tax evasion vs. tax avoidance

Section overview

- Tax evasion is illegal and tax avoidance is legal.
- Tax evasion could lead to prosecution for both the client and his accountant
- Tax avoidance through legal procedure

Tax evasion

Tax evasion consists of seeking to mislead tax authorities by either:

- Suppressing information to which tax authorities is entitled, for example by:
 - Failing to notify tax authorities of a liability to tax

- Understating income or gains
- Omitting to disclose a relevant fact

Or

- Providing tax authorities with deliberately false information, for example by:
 - Deducting expenses that have not been incurred
 - Claiming capital allowances on plant that has not been purchased

Minor cases of tax evasion are generally settled out of court via the payment of penalties. However, there is a statutory offence of evading income tax that can be dealt with in a magistrate's court.

Serious cases of tax evasion, particularly those involving fraud, continue to be the subject of criminal prosecutions which may lead to fines and/or imprisonment on conviction.

Furthermore, tax evasion offences will fall within the definition of money laundering and in certain cases individuals may be prosecuted under one of the money laundering offences. This includes both the under declaring of income and the over claiming of expenses.

If the assets of any clients were derived from illegal activities or if the client has committed tax evasion that considered under money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant may consider seeking legal advice and he should report this to the authorities.

Tax avoidance

Tax avoidance is not defined, but is broadly any legal method of reducing the tax burden.

The distinction between tax evasion and tax avoidance is usually obvious as avoidance has no intention of misleading tax authorities.

The accountant should take care in situations, for example, where a client believes that his tax avoidance has been successful and so does not submit a tax return.

Example-1

- (a) You have been invited by the organizers of a seminar to deliver lecture on the responsibilities of a Chartered Accountant rendering professional tax services. The organizers of the seminar informed you about the average understanding level of the participants. According to the organizers, the participants might have perception that a Chartered Accountant rendering professional tax services is obliged to act absolutely in the interest of his/her client/employer.

Requirements:

Prepare handouts addressing the following issues for distribution at the seminar to be held next month:

- Responsibilities of a practicing Chartered Accountant to the public while rendering tax advisory services.
- Guidance for a Chartered Accountant, working in the tax department of a company, on conflict of loyalties.

Answer-1 (a):

(a) Responsibilities of a practicing Chartered Accountant to the public while rendering tax advisory services

A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce.

This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the professional accountant serves.

Professional accountants have an important role in society. Investors, creditors, employers and other sectors of the business community, as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behavior of professional accountants in providing such services have an impact on the economic well-being of their community and country.

It is in the best interest of the worldwide accountancy profession to make known to users of the services provided by professional accountants that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance. Tax experts help to establish confidence and efficiency in, and the fair application of, the tax system. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest. As such, a Chartered Accountant in practice, who advises on tax matters, also bears significant responsibilities to the public.

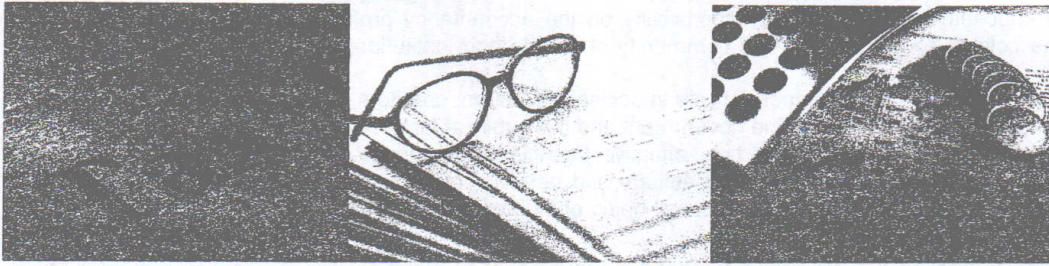
(b) Guidance for a Chartered Accountant, working in the tax department of a company, on conflict of loyalties

Employed professional accountants owe a duty of loyalty to their employer as well as to their profession and there may be times when the two are in conflict. An employee's normal priority should be to support his or her organization's legitimate and ethical objectives and the rules and procedures drawn up in support of them. However, an employee cannot legitimately be required to:

- (a) Break the law;
- (b) Breach the rules and standards of their profession;
- (c) Lie to or mislead (including misleading by keeping silent) those acting as auditors to the employer; or
- (d) Put their name to or otherwise be associated with a statement which materially misrepresents the facts.

Differences in view about the correct judgment on accounting or ethical matters should normally be raised and resolved within the employee's organization, initially with the employee's immediate superior and possibly thereafter, where disagreement about a significant ethical issue remains, with higher levels of management or non-executive directors.

If employed accountants cannot resolve any material issue involving a conflict between their employers and their professional requirements they may, after exhausting all other relevant possibilities, have no other recourse but to consider resignation. Employees should state their reasons for doing so to the employer but their duty of confidentiality normally precludes them from communicating the issue to others (unless legally or professionally required to do so).



Chapter 32

Tax Planning

Contents

What tax planning really means

Tax planning is the art of arranging affairs in ways that postpone or avoid taxes. By employing effective tax planning strategies, anyone can have more money to save and invest or more money to spend or both. It's choice.

Put another way, tax planning means deferring and flat out avoiding taxes by taking advantage of beneficial tax-law provisions, increasing and accelerating tax deductions and investment tax rebates, and generally making maximum use of all applicable area under our beloved IT Ordinance, 1984.

Of course, we should not change your financial behavior solely to avoid taxes. Truly effective tax planning strategies are those that permit us to do what we want while reducing tax burden along the way.

Thus, 'tax planning' means dealing with the tax matters of a taxpayer with a view to maximizing the after-tax rate of return on investments after ensuring voluntary tax compliance. For this purpose, each taxpayer has to

1. Ensure that proper records are kept;
2. Deduct tax at source where it is necessary;
3. Pay advance tax in time, if applicable;
4. File returns in time;
5. Comply with notices received from the tax authorities; and
6. Be aware of legal remedies where it does not have its rights under the law recognized.

Tax planning takes maximum advantage of the exemptions, deductions, rebates, reliefs and other tax concessions allowed by taxation statutes, leading to the reduction of the tax liability of the tax payer.

How tax planning and financial planning are connected?

Financial planning is the art of implementing strategies that help us to reach our financial goals, be they short-term or long-term. That sounds pretty simple. However, if the actual execution was simple, there would be a lot more rich folks.

Tax planning and financial planning are closely linked, because taxes are such a large expense item as we go through life. If we become really successful, taxes will probably be our single biggest expense over the long haul. So planning to reduce taxes is a critically important piece of the overall financial planning process.

Problem-1

Mr. Shin, Chief Financial Officer (CFO) of Technoworld Inc., a Singapore based IT company has appointed you as tax consultant and sought your opinion on the areas of tax planning so as to prepare an effective business plan.

Technoworld wants to expand its business in Bangladesh by providing IT based solutions in many industries along with BPO services. It wants to set up a liaison office. But it has been advised by BIDA to incorporate a company in Bangladesh with 100% equity ownership to run the business.

In the first year it has a plan of selling BDT 1Bn of IT and BDT 500 Mn of BPO services with 10% increment in each of the following two years. If the service charges are remitted from Bangladesh, the purchaser will deduct 20% of withholding tax of it and 15% VAT will be borne by the service recipient. Technoworld achieves 20% income before tax on net proceeds and has 25% corporate tax rate in Singapore. If it incorporates a company in Bangladesh, the services it will deliver will fall under ITES (information technology enable/services) and in accordance of business plan it will achieve 30% Income before tax. Under double taxation avoidance agreement, Dividend from Bangladesh to Singapore is subject to maximum 15% tax withholding.

Requirement:

Give your opinion to Techno world elaborating the aspects of the above mentioned options with demonstrating financial impact.

Answer to problem no-1:

Mr. Shin,
Chief Financial Officer (CFO)
Technoworld Inc.

Subject: Opinion regarding tax planning and techniques

Dear Sir,

We refer your letter dated 15 April 2018 where you have narrated a plan of business with Bangladesh and requested us to provide our opinion on the areas of tax planning which will enable you to prepare an effective business plan. We are submitting the following analysis and suggestions which will curtail the tax burden for your prospective business complying the tax legislations presently enforced in Bangladesh.

Technoworld wants to expand its business in Bangladesh by providing IT based solutions in many industries along with BPO services. Initially it wants to set up a liaison office. It has been advised by BIDA to incorporate a company in Bangladesh with 100% equity ownership to run the business. Hence, there are two options in hands, namely, selling services from abroad where liaison office will play a coordination roles and setting a local fully owned subsidiary of Technoworld to deliver the services to Bangladeshi customers locally.

Relevant tax regulations in Bangladesh:

- (a) As per para 33 of Sixth Schedule, Part A of Income Tax Ordinance (ITO), 1984 Information Technology Enable Services (ITES) has been exempted from income tax till 30th June, 2024.
- (b) Para 33 of Sixth Schedule, Part A of ITO 1984 states the definition of ITES as under:
Information Technology Enabled Services (ITES) means-Digital Content Development and Management, Animation (both 2D and 3D), Geographic Information Services (GIS), IT Support and Software Maintenance Services, Web Site Services, Business Process Outsourcing, Data entry, Data Processing, Call Centre, Graphics Design (digital service), Search Engine Optimization, Web Listing, document conversion, imaging and archiving including digital archiving of physical records.
- (c) Under Finance Act 2018, the corporate tax rate of a non-listed company is 35%.
- (d) Under section 54 of ITO 1984, the tax deduction rate on payment of dividend is 20%

- (e) Based on article 24 of Double Taxation Avoidance Treaty between Singapore and Bangladesh, Tax deducted at source in Bangladesh will be eligible to take credit in Singapore to the extent of tax computed on the same income.
- (f) As per sec 56 of ITO 1984, foreign remittance on account of IT solutions and BPO related services to a non-resident Bangladeshi is subject to deduction of tax at source @ 20% under the category of Technical service fees or Technical knowhow fees.
- (g) Under VAT Act 1991, for the import of services, service recipient will be responsible to pay VAT and will be eligible for input VAT credit against the treasury challan of the deposit of VAT.

Analysis of tax legislations applicable for Technoworld:

Technoworld has two alternatives for doing business here in Bangladesh. It can sell services from abroad where liaison office will play a coordination role or set a local fully owned subsidiary of Technoworld Singapore to deliver the services to Bangladeshi customers locally.

From the perspective of tax laws, if it sells services to Bangladesh from Singapore, it will receive the proceeds in Singapore, which will be remitted by the service recipients in Bangladesh. This remittance will be subject to withholding tax @ 20% as per ITO, 1984 after which the net proceeds will be remitted to Technoworld from Bangladesh. In Singapore, Technoworld will be eligible to take the credit of tax deducted at source in Bangladesh. VAT will be borne by the service recipient and will be eligible for input VAT credit. It will incur cost neither to Technoworld nor to the service recipients in Bangladesh.

If Technoworld Singapore sets a local fully owned subsidiary in Bangladesh, it will be subject to 35% corporate tax rate. Moreover, in accordance with double taxation avoidance treaty between Singapore and Bangladesh, the payment of dividend from Bangladesh is subject to 15% tax withholding in Bangladesh which we can assume will be available for full foreign tax credit by Technoworld in Singapore.

Outcome in Business plan after tax impacts:

Technoworld sells services to Bangladesh from Singapore				
		Year 1	Year 2	Year 3
Gross proceeds	A	1,500,000,000	1,650,000,000	1,815,000,000
Tax deduction at source in BD @ 20%	B	300,000,000	330,000,000	363,000,000
Remittance i.e. Net proceeds	C=A-B	1,200,000,000	1,320,000,000	1,452,000,000
Income before tax (20% on net proceeds)	D	240,000,000	264,000,000	290,000,000
Corporate tax (25%)	E	60,000,000	66,000,000	72,500,000
Credit on corporate tax on business from BD under DTAA	F	60,000,000	66,000,000	72,500,000
Net profit after tax for Technoworld	D-E+F	240,000,000	264,000,000	290,000,000
Technoworld sets a fully owned subsidiary in Bangladesh				
		Year 1	Year 2	Year 3
Gross proceeds	A	1,500,000,000	1,650,000,000	1,815,000,000
Income before tax (30% on Gross proceeds)	B	450,000,000	495,000,000	544,500,000
Corporate tax rate in BD (35%)	C	157,500,000	173,250,000	190,575,000
Income after tax / Gross dividend income of Technoworld	D=B-C	292,500,000	321,750,000	353,925,000
Withholding tax on dividend (15%)	E	43,875,000	48,262,500	53,088,750
Net remittance of dividend to Technoworld	F=D-E	248,625,000	273,487,500	300,836,250
Corporate tax of Technoworld (25%) on dividend	G= 25% D	73,125,000	80,437,500	88,481,250
Withholding tax credit on dividend taken by Technoworld under DTAA	H=E	43,875,000	48,262,500	53,088,750
Additional tax in Singapore	I=G-H	29,250,000	32,175,000	35,392,500
Net profit after tax for Technoworld	J=F-I	219,375,000	241,312,500	265,443,750

Suggestions:

From the above table of business plan analysis it is found that, for the first three years in Singapore Technoworld will earn Tk. 794,000,000 if it sells services from Singapore to Bangladesh and Tk. 726,131,250 if it sets a fully owned subsidiary in Bangladesh.

Hence, after putting the taxation impacts, considering the change in financial of Technoworld, Singapore, you should opt to provide services from abroad and take the net proceeds from Bangladesh.

Thank you very much for taking us to your confidence. Should you require any clarification, please do not hesitate to contact us.

Thanking you,

Problem-2

You are a Chartered Accountant in practice and have expertise in income tax matters. Mr ABC ("Client") is your client and a director of XYZ Ltd. ("Company"). He has provided you with the following information and requested to consider each case separately:

- (a) The Client is interested to do his own tax planning for the income year 2018-19 on the basis of following forecasted information and considering the provisions of prevailing tax laws:

Particulars	Tk.
Gross interest income from savings instruments (taxable)	300,000
Tax deduction at Source @ 5% from interest income	15,000
Income from house property (taxable)	180,000
Income from salary (taxable)	400,000
Investment eligible for tax credit	100,000

Requirements:

Provide the Client with the information about his taxable income, investment allowance, net tax payable and suggest him whether he should invest in savings instruments.

- (b) The Client is planning to buy a residential flat of 500 square meter (sqm) located at Gulshan along with 0.50 katha share of land from a real estate company. The total purchase price of the flat is Tk. 5,750,000, which is sum of land value of Tk. 2,000,000 and flat value of Tk. 3,750,000.

Answer to question No-2:

Answer : (a)

The required information are provided below on the basis of forecasted information relating to income year 2018-19 applying provisions of tax laws for AY 2018-19:

Name of Assessee: ABC

Taxpayer's Identification Number :

Statement of Forecasted Income during the income year ended on 30 June, 2019

Particulars	Taxable Income (Taka)	Tax (Taka)
1. Salaries: u/s 21	400,000	
2. Interest on securities: u/s 22 (gross interest on savings instruments)	300,000	
3. Income from house property: u/s 24	180,000	
4. Total income: (1+2+3)	880,000	

5. Tax leviable on total income (Note 2)	48,000
6. Tax rebate: u/s 44(2)(b)	15,000
7. Tax payable (difference between serial no. 5 and 6)	33,000
8. Tax Payments (tax deducted from interest on savings instruments)	15,000
9. Net tax payable (difference between serial no. 8 and 9)	18,000

Note 1:

Tax deduction at source from the interest on savings instruments shall be deemed to be the minimum tax from that particular source as per amendment made to the provisions of section 82C through the Finance Act, 2016

Note 2:

Tax on Taxable Income excluding interest on savings instruments:

Slabs/Particulars	Taxable Income (Tk.)	Rate	Tax (Tk.)
First	250,000	0%	-
Next	330,000	10%	33,000
(a) Tax payable on taxable income excluding interest on savings instruments			33,000
(b) Tax deducted at source from interest on savings instruments (Final tax as per section 82C)			15,000
(a+b) Total tax payable (including 82C)			48,000

Investment Allowance & Tax rebate:

(a) Actual Investment made during the income year:

(b) 25% of (Total Taxable Income -Income u/s 82C)

(c) Maximum Limit

(d) Allowable Investment Limit for Tax rebate - the lowest of (a), (b) and (c)

Tk.
100,000
145,000
15,000,000
100,000

Investment Tax rebate [(d) X 15%]

15,000

Note 3:

Tax savings for making investment in savings instruments:

Slab/Particulars	Taxable interest (Tk.)	Tax (Tk.)
10% Tax Slab (400,000 - 330,000)	70,000	7,000
15% Tax Slab (300,000 - 70,000)	230,000	34,500
Total (A)	300,000	41,500
Tax Deduction at Source and minimum tax (B)		15,000
Tax Savings for minimum tax scheme (A-B)		26,500

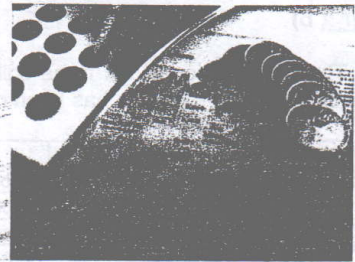
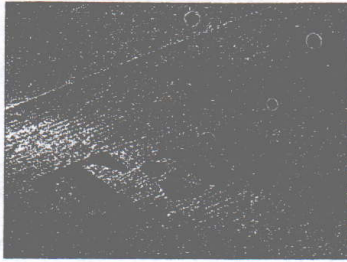
As per aforementioned computation, investment in savings instruments will result in tax savings of Tk. 26,500 compared to the tax computed for other kinds of income assessed under section 82C. Without considering other dynamics of the economy and provisions of tax laws, I would suggest him to make investment in savings instruments.

Answer : (b)

(1) The computation of tax to be collected at source by the registering officer responsible for registering any document of a person has been computed below:

Particulars	Quantity	Deed Value (Tk.)	Rate	Amount (Tk.)	Tax Payable (Tk.)	Remarks
Land	0.50 Katha	2,000,000	4% of deed value	80,000	150,000	Whichever is higher
			Tk. 300,000/Katha	150,000		
Flat	500 sqm	3,750,000	4% of deed value	150,000	300,000	Whichever is higher
			Tk. 600/sqm	300,000		
Total tax to be collected at source by the registering officer					450,000	

(2) As per section 53H of the ITO, 1984, and rule 17II of the ITR, 1984, tax on transfer of property shall be collected from the person whose right, title or interest is sought to be transferred, assigned, limited or extinguished thereby, at the time of registration of transfer document.



Chapter 33

Miscellaneous

Contents

Introduction
Examination context

Topic List

33.1	Protection of information
33.2	Fiscal and other incentives to foreign investors in Bangladesh
33.3	Time limitations in the Income Tax Ordinance 1984

Introduction

Learning objectives

- Understand protection of information and relevant provisions
- Identify different types of offences and prosecutions
- Specify different fiscal and other incentives given to foreign investors
- Mention different sections where time limitation is proposed

Practical significance

This is a chapter that includes some important issues of income tax laws in the country. As due to the assessment procedures, income tax authorities at different levels possess valuable information of corporate houses and different individuals. In certain cases, the assessee expects that the information will be protected and IT Ordinance prescribes different provisions related to such protection of information.

Bangladesh government offers different fiscal and other incentives to foreign investors to attract FDI in the country. It is important for economic development of the country and to establish congenial environment for investment.

Another important coverage of the chapter is offences and prosecutions. Different types of offences are identified with its ultimate prosecutions. Professional accountants should be very expert in these areas to save their client from prosecutions.

At the end, it includes a summary of different sections of IT ordinance where different time limitations are specified. These are very important in a sense that failure to abide by the time frames in different sections may lead to non-compliance, even sometimes the assessee may be considered as assessee in default.

Stop and think

Protection of information is a right to assessee. Foreign investors in Bangladesh enjoy fiscal and other incentives. Punishable offences are subject to defined prosecutions. It is likely that you know all the sections where a time frame is proposed. Have you stopped to think about how this affects the actions that you take?

Working context

Professional accountants practice tax on behalf of their clients where protection of information is important. They should also know different incentives available to foreign investors to attract foreign investment in the country. Professional accountants should know different punishable offences and limited time frame to save their clients from possible trouble.

Syllabus links

The topics covered in this chapter are essential background knowledge which will underpin the whole of your Taxation studies.

Examination context

Exam requirements

In the examination, candidates may be required to:

- Identify the documents and information that need protection
- Mention different types of offences and respective prosecutions
- Specify different fiscal and other incentives given to foreign investors to attract investment
- Analyze different sections where time limitation is proposed

Question practice

For question practice on these topics, go to the suggested questions and answers covering the basic idea about taxation.

33.0 MISCELLANEOUS

Section overview

- ➔ Specified statements, return, documents, any evidence and record should be protected.
- ➔ Foreign investors enjoy fiscal and other incentives like tax holiday, accelerated depreciation, double tax avoidance etc. to encourage them to invest in Bangladesh.
- ➔ Some offences are punishable.
- ➔ IT Ordinance prescribes time limit in different sections where compliance is important.

33.1 Protection of information

As per section 163 (1) of Income Tax Ordinance, all particulars or information contained in the following shall be confidential and shall not be disclosed:

- a) any statement made, return furnished or accounts or documents produced under the provisions of this Ordinance;
- b) any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance other than proceedings under Chapter XXI (Offences and Prosecution);
- c) any record of any assessment proceedings or any proceeding relating to the recovery of demand under this Ordinance.

However, the disclosure of following information in defined cases and purposes is not considered confidential as per section 163(3):

- a) any particulars in, or in respect of any statement, return, accounts, documents, evidence, affidavit or deposition required for the purposes of prosecution of an offence under this Ordinance, the Penal Code (XLV of 1860), or the Foreign Exchange Regulation Act, 1947 (VII of 1947);
- b) any particulars or information which is necessary for the purposes of this Ordinance to any person acting in the execution of this Ordinance, or of any particulars to any person being an expert whose services have been placed at the disposal of the Government by any international organization of which Bangladesh is a member;
- c) any particulars or information which is occasioned by the lawful employment under this Ordinance of any process for the service of any notice or the recovery of any demand;
- d) any particulars of the amount due from an assessee under this Ordinance by the Board or any officer authorized by it, or by the Commissioner, to any department of the Government, local authority, bank, corporation or other organization for the purpose of the recovery of any demand;
- e) any particulars to a Civil Court in any suit which relates to any matter arising out of any proceeding under this Ordinance and to which Government is a party;
- f) any particulars to the Controller and Auditor-General of Bangladesh for the purpose of enabling him to discharge his functions under the Constitution;
- g) any particulars to any officer appointed by the Controller and Auditor-General of Bangladesh or the Board for the purpose of auditing tax receipts or refunds;
- h) any particulars relevant to any inquiry into the conduct of any official of the income tax department to any person appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of any such inquiry;
- i) any particulars relevant to any inquiry into a charge of misconduct in connection with income tax proceedings against a lawyer, a chartered accountant or a cost and management accountant to any authority empowered to take disciplinary action against such lawyer, chartered accountant or cost and management accountant;
- j) any particulars by a public servant where the disclosure is occasioned by the lawful exercise by him of the powers under the Stamp Act; 1899 (II of 1899), to impound an insufficiently stamped document;

- k) any facts to an authorized officer of the Government of any country outside Bangladesh with which the Government of the People's Republic of Bangladesh has entered into an agreement for the avoidance of double taxation and the prevention of fiscal evasion where such disclosure is required under the terms of the agreement;
- l) any such facts to any officer to the Government as may be necessary for the purpose of enabling the Government to levy or realize any tax imposed by it;
- m) any such facts to any authority exercising power under the Excise and Salt Act, 1944 (I of 1944), the Gift-tax Act, 1963 (XIV of 1963), the Wealth-tax Act, 1963 (XV of 1963), the Customs Act, 1969 (IV of 1969), the Sales Tax Ordinance, 1982, (XVIII of 1982) or as may be necessary for the purpose of enabling it duly to exercise such powers;
- n) So much of any such particulars, to the appropriate authority as may be necessary to establish whether a person has or has not been assessed to income tax in any particular year or years, where, under the provisions of any law for the time being in force, such fact is required to be established;
- o) Any such particulars to the Bangladesh Bank as are required by that Bank to enable it to discharge its functions under the foreign exchange control laws or to compile financial statistics of international investments and balance of payments;
- p) Any such information as may be required by any officer or department of the Government for the purpose of investigation into the conduct and affairs of a public servant;
- q) Any such particulars as may be required by any order made under section 19(2) of the Foreign Exchange Regulation Act, 1947 (VII of 1947); or
- r) A list of higher tax-payers in accordance with rules made in this behalf.

33.2 Fiscal and other incentives to foreign investors in Bangladesh

Bangladesh always encourages foreign investment in the country for the economic development of the country. Thus, the government provides incentives to encourage foreign investment in the country through different wings/departments of the government. A summary of such incentive is given below:

Approval authorities	Fiscal incentives	Other incentives
BOI/BIDA	Permission to establish industry	100% Foreign equity allowed
Bangladesh Bank	Remittance facility	Unrestricted exit policy
NBR	Concessionary income tax in lieu of tax holiday and accelerated depreciation, Concessionary duty on imported machinery	Full repatriation facilities of dividend and capital at the event of exit
	Avoidance of double taxation in selective countries	
BEPZA	Remittance of royalty, technical know-how, technical assistance fee	

33.3 Time limitations in the Income Tax Ordinance, 1984

There are several time limitations under the Income Tax Ordinance 1984, non-compliance of which, in many cases, attracts penal actions apart from disallowances of claims, imposition of additional tax, departmental action against officers and the like. It is therefore necessary to have a ready reckoner for all of these time limitations. With this objective following table has been compiled:

Area	Particulars	Ref
Residential status of individual assessee	An individual is to be treated as resident assessee if he has been in Bangladesh for: Either 182 days or more in the income year or 90 days or more in the income year + 365 days or more during 4 years preceding the income year	2(55)

Area	Particulars	Ref
Non-payment of Bank Interest within 3 years	<p>If any bank interest was not paid within 3 years after expiry of the income year, to such extent as it remains unpaid, shall be deemed to be business income of the assessee during the income year immediately following the expiry of the said 3 years.</p> <p>Provided that where any interest or share of profit is paid in a subsequent year, the amount so paid shall be deducted in computing the income in respect of that year.</p>	19(15)(aa)
Non-payment of trading liability within 3 years	<p>Trading liability or portion thereof as has not been paid within 3 years of the expiration of the income year in which deduction was made in respect of the liability, such liability or portion, as the case may be, shall be deemed to be the income of the assessee from business or profession during the income year immediately following the expiry of the said 3 years;</p> <p>Provided that where a trading liability is paid in a subsequent year, the amount so paid shall be deducted in computing the income in respect of that year.</p>	19(15)(c)
Repayment of loan within 3 years	<p>Where any sum, or aggregate of sums exceeding Tk. 5,00,000 is claimed or shown to have been received as loan by an assessee[not being a company] during any income year from any person, not being a banking company or a financial institution, otherwise than by a crossed cheque drawn on a bank, and has not been paid back in full within 3 years from the end of the income year in which it is claimed or shown to have been received, the said sum or part thereof which has not been paid back, shall be deemed to be the income of the assessee for the income year immediately following the expiry of the said 3 years and be classifiable under the head "Income from other sources":</p> <p>Provided that where the loan referred to in this subsection is paid back in a subsequent income year, the amount so paid shall be deducted in computing the income in respect of that subsequent year.</p>	19(21)
Interest on borrowed capital in case of house property income	<p>Where the property has been constructed with borrowed capital and no income under section 24 was earned from that property during the period of such construction, the interest payable during that period on such capital, in three equal proportionate installments for subsequent first three years for which Income is assessable from that property</p>	25(l)(gg)
Exemption of capital gain In case of reinvestment for the purpose of business or profession	<p>Capital gains shall not be charged to tax where a new capital asset for the same business is purchased within 1 year after or before the date of transfer of the capital asset.</p>	32(5)

Area	Particulars	Ref
Carry forward of loss	If business loss, loss in speculation business, loss under the head capital gains, and loss under the head agricultural income cannot be wholly set-off during the year, the amount of loss not so set-off shall be carried forward to the next assessment year and so on for not more than 6 successive assessment years	38, 39, 40 & 41
Tax holiday period of industrial undertaking	5 years or 10 years of tax holiday depending on country location.	46B(1)(i) & 46B(1)(ii)
Tax holiday period of physical infrastructural facility	10 years tax holiday is applicable for physical infrastructural facility.	46C(i)
Re-investment of 40% tax holiday income	30% of the tax holiday income is to be invested in the said undertaking or in any new industrial undertakings during the tax holiday period or within 1 year from the end of the period and in addition to that another 10% is to be invested in each year before the expiry of 3 months from the end of the income year in the purchase of shares of a listed companies. Provided that the quantum of investment referred to in this clause shall be reduced by the amount of dividend, if any, declared by the company enjoying tax holiday	46B(4)(b)
Application for tax holiday to NBR	Application for tax holiday in the prescribed form has to be made to the board within 6 months from the end of the month of commencement of commercial production or operation.	46B(5)(e)
Decision of NBR on tax holiday publication	The Board shall have to give its decision on tax holiday application within 45 days from the date of receipt of the application by the Board, failing which the undertaking shall be deemed to have been approved by the Board. Provided that the Board shall not reject any application made under this section unless the applicant is given a reasonable opportunity of being heard	46B(6)
Review of tax holiday decision	The Board may review the previous decision or Order, if the review application is made within 4 months of the receipt of such decision or order and passes such order in relation thereto as it thinks fit.	46B(7)
Carry forward of loss during tax holiday period	Loss during the tax holiday period shall not be carried forward beyond the tax holiday period	46B(9)
Consequence of failure to deduct tax	Where the tax deducting authority fails to deposit the tax deducted at source within the time limit he or it shall have to pay additional amount @ 2% per month.	57(1)(b)

Area	Particulars	Ref
Installments of advance tax	Advance tax shall be payable in 4 equal installments on the fifteenth day of September, December, March and June of the financial year for which the tax is payable. However cigarette company shall have to pay advance tax monthly @ 3% on net sales.	66
Simple interest payable by the Govt. on excess payment of advance tax	The period for which simple interest shall be payable by the Govt. for excess payment of advance tax is the first day of July of the year of assessment to the date of regular assessment or a period of 2 years from the said first day of July, whichever is shorter.	72(2)
Simple interest payable by the assessee in deficiency in payment of advance tax	The period for which simple interest shall be payable by the assessee for deficiency in payment of advance tax is first day of July of the assessment year in which the advance tax was paid to the date of regular assessment or a period of 2 years from the said first day of July, whichever is shorter	73(2)
Filing of the return	Income tax return shall have to be filed: (i) In the case of a company, generally within 6.5 months from the end of the income year; and (ii) In all other cases, by the thirtieth day of November next following the income year. However, the last date for the submission of return may be extended by DCT up to 2 months at his own capacity and further 2 months with the prior approval of IJCT.	75
Notice for filing return	Minimum 21 days is to be given in the notice u/s 77 issued by the DCT to file return of income.	77(2)
Notice calling for accounts and documents	While making assessment for a particular year DCT may call for accounts/documents relating to any period being earlier than 3 years prior to the income year	79
Communicating assessment order u/s 82	Assessment order U/S 82 is to be communicated within 30 days from date of assessment	82
Communicating assessment order u/s 83(2)	Assessment order u/s 83(2) is to be communicated within 30 days from the date of assessment	83(2)
Communicating assessment order U/S 84	Assessment order U/S 84 is to be communicated within 30 days from the date of assessment	84
Intimation of business discontinuance	Any person discontinuing any business or profession in any financial year shall give to the DCT a notice of such discontinuance within 15 days thereof	89(2)
Notice requiring to file return in case of person leaving Bangladesh	For the purpose of making an assessment in case of persons leaving Bangladesh, the DCT may serve a notice upon the person concerned requiring him to file a return and an estimate of total income, within such time, not less than 7 days , as specified in the notice	91(3)

Area	Particulars	Ref
Time within which notice can be issued	<p>Notice u/s 93 may be issued:</p> <ul style="list-style-type: none"> (i) in case where return has not been filed and assessment not done then at any time (ii) in case where return not filed but assessment completed then within 6 years from the end of the assessment year (iii) in case of concealment or suppression then within 5 years from the end of the assessment year. However Commissioner has power to enhance one year more to re-open a case. 	93(3)
Time limitation for assessment	<ul style="list-style-type: none"> (i) Normally assessment is to be finalized within 6 months from the end of the assessment year. (ii) In case of tax audit assessment u/s 82BB(3) shall be finalized within 2 years from the end of the assessment year in which the income was first assessable. (iii) Assessment of cases falling u/s 93 is to be finalized within 2 years from the end of the year in which 93 notice was issued; and (iv) Assessment of transfer pricing cases falling u/s 107C is to be finalized within 3 years from the end of the year in which notice was issued 	94
Appeal effect	<p>Assessment in pursuance of order u/s 120, 121A, 156, 159, 161 & 162 are to be revised within 30 days from the date on which the order was communicated and such revised order is to be communicated within 30 days next following.</p> <p>Provided that where an order of assessment has been set aside by any authority in that case the assessment shall be made within 60 days from the date on which the order was communicated to him</p>	94(3)
Filing of return in case of air transport business	In case of non-resident air transport business, quarterly return is to be filed to the DCT within 45 days from the last day of each quarter of every financial year, that is to say thirtieth day of September, the thirty-first day December, the thirty-first day of March and the thirtieth day of June, respectively	103A(2)
Retention of seized asset	The seized books of accounts or other documents shall not be retained by the authorized officer for a period exceeding 180 days from the date of the seizure unless for reasons recorded in writing	117(8)
Finalization of assessment in case of search and seizure	After seizure on money, bullion, jewellery or other valuable articles assessment is to be finalized within 90 days of the seizure of the assets	118(2)

Area	Particulars	Ref
Time limitation for passing order u/s 120	No order shall be made U/S 120(1) after the expiry of 4 years from the date of the order sought to be revised	120(2)
Refund on the basis of appeal order	Refund is to be made within 60 days from the date on which refund has become due without having to make any claim in this behalf	149
Interest on delayed refund	Where a refund due to an assessee is not paid within 2 months of the date of the claim for refund, or refund becoming due consequent upon any order passed in appeal or other proceeding under the IT ordinance interest @ 7.5% per annum shall be payable to the assessee on the amount of refund from the month following the said two months to the date of issue of the refund	151
Filing of appeal	Appeal shall be presented to the appeal authority within 45 days from the date of service of the notice of demand relating to the assessment or penalty, as the case may be	154(2)
Time within which appeal order to be communicated	On the disposal of an appeal, the appeal order is to be communicated to the appellant, the DCT and Commissioner within 30 days of the passing of such order	156(5)
Disposal of appeal	An appeal shall be deemed to have been allowed if the appeal authority fails to make an order thereon within a period of 150 days from the end of the month of appeal	156(6)
Filing of appeal to the Appellate Tribunal	Appeal to the Appellate Tribunal shall be filed within 60 days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner as the case may be. Provided that the Appellate Tribunal may admit an appeal after the expiry of 60 days if it is satisfied that there was sufficient cause for not presenting the appeal within that period	158(4)
Time within which Tribunal order to be communicated	The Appellate Tribunal shall communicate its order on the appeal to the assessee and to the Commissioner within 30 days from the date of such order	159(4)
Disposal of appeal by the Taxes Appellate Tribunal	Within 6 months from the end of the month in which the appeal was filed. In case an additional member is appointed by the President for hearing a case because of the difference of opinion of the 2 members, the time limitation to dispose of the case will be 8 months instead of 6 months.	159(6)
Reference to the High Court Division	Reference can be made to the High Court Division within 90 days from the date of receipt of the order of the Appellate Tribunal	160(1)

Area	Particulars	Ref
Correction of error	Where any error is brought to the notice or the authority concerned by the assessee and no amendment is made by such authority within the financial year next following the date in which the error is brought to its notice, the amendment shall be deemed to have been made so as to correct the error.	173(3)
Correction of error	No correction of error u/s 173(1) shall be made after the expiration of 4 years from the date of the order sought to be amended	173(4)
Application for accelerated depreciation to NBR	Application in the prescribed form for accelerated depreciation allowance is to be submitted to NBR within 6 months from the end of the month of commencement of commercial production or operation	3rd Schedule Para 7B
	The Board shall have to give its decision on application of accelerated depreciation within 3 months from the date of receipt of the application	3rd Schedule Para 7B

The End